

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

OPTIS WIRELESS TECHNOLOGY, (CAUSE NO. 2:19-CV-066-JRG
LLC., et al,)
Plaintiffs, ()
vs. ()
APPLE, INC., (AUGUST 10, 2021
(MARSHALL, TEXAS
Defendant. (9:00 A.M.

VOLUME 1

TRIAL ON THE MERITS
BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 THE COURT: Thank you. Be seated, please.

2 Good morning, ladies and gentlemen. Thank you for being
3 here.

4 My name is Rodney Gilstrap, and I am the chief United
5 States District Judge for the United States District Court for
6 the Eastern District of Texas.

7 I've lived in Marshall since 1981. I practiced law in
8 this area in East Texas for 30 years, and in 2011 I was
9 appointed and confirmed as judge in this court and have been
10 on the bench here since 2011.

11 Let me make a small confession. I was not born in Texas.
12 I was born in Florida, but I got here as quick as I could. I
13 came to Texas at the ripe old age of 18 to attend college and
14 then law school at Baylor University.

15 I am married, and I have two grown children, and my wife
16 owns and operates a retail floral business here in Marshall.

17 Now, I tell you all these things about myself because in
18 a few minutes I'm going to ask each of you to give me the same
19 kind of information about each of you, and I think you're
20 entitled to know as much about me as I'm about to find out
21 about each of you-all.

22 Let me mention early in the process this morning that
23 we're going to observe certain public health protocols through
24 this trial. Everyone in the gallery is going to remain masked
25 throughout the entire trial whether they've been vaccinated or

1 not.

2 Those of you that are selected to serve on the jury --
3 we're going to select and seat eight jurors this morning to
4 hear the evidence in this case. Once those jurors are
5 selected and sworn and seated and we begin the trial, I'm
6 going to ask those eight individuals to remove their mask and
7 put on a plastic face shield like this in lieu of the mask.
8 It's just practically impossible to try a jury trial if you
9 can't see the faces of the jury. So that's what we're going
10 to do there.

11 Also, ladies and gentlemen, you probably don't see them,
12 but on both sides of the courtroom there are new industrial
13 air filtration units that are running at all times. The air
14 in this room is filtered constantly.

15 Also, those of you that are selected on the jury are
16 going to have lunch provided for you each day by the court,
17 which means you will not be coming and going from the building
18 out into the community to find your own lunch and then
19 returning. You'll be here in the building from the time you
20 arrive in the morning until we recess for the evening and you
21 go home to your respective places each evening.

22 There may be some other precautions that I'll mention to
23 you as we go forward, but I want you to be aware of those now
24 at the beginning of the process.

25 Also, if you'll indulge me for a minute, I'd like to

1 review briefly with you why we came to have our American civil
2 jury system that you're all here for this morning.

3 If you go back in ancient history and if you begin with
4 the first five books of the Old Testament, called the
5 Pentateuch, you find the ancient Hebrew nation impaneled
6 juries to decide issues of property ownership and property
7 value.

8 The ancient Greeks began using a jury system about
9 1500BC. The Romans, as they did with many things, copied the
10 jury system from the Greeks, and it was the ancient Romans
11 that brought what we know to be the jury trial system to
12 England when they crossed the English Channel and conquered
13 that island in the fourth century AD.

14 And the jury trial system came with the Romans and was in
15 place in what we now know to be Great Britain until about the
16 12th century AD when a rather tyrannical king came to the
17 throne of Britain, King John. And King John became embroiled
18 in a series of serious arguments and disputes with his nobles,
19 one of which was the king's effort to curtail the right to
20 trial by jury.

21 Those disputes almost led to civil war, but civil war was
22 avoided by a resolution of their disputes at a place called
23 Runnymede, and the document that was generated and signed by
24 the king and his nobles that solved those disputes and were
25 stored in writing the right to trial by a jury in England

1 you've all heard of before: It's called the Magna Carta.

2 In fact, ladies and gentlemen, 28 of our United States
3 have adopted the language verbatim from the Magna Carta
4 guaranteeing the right to trial by jury in their own state
5 constitutions.

6 So you can see that the right to trial by jury was well
7 engrained in our founding fathers when they came to this
8 continent as British colonists, and the right to trial by jury
9 flourished in colonial America for over a hundred years until
10 another tyrannical king came to the throne of Great Britain.
11 This time his name was King George, the III.

12 And King George, the III, as we all know from our history
13 courses in the past, became embroiled with various disputes
14 with his colonists here in North America. One of those
15 disputes was King George's efforts to curtail the right to
16 trial by jury.

17 As a matter of fact, when Thomas Jefferson sat down to
18 write the Declaration of Independence, setting forth in
19 writing the various reasons and issues that necessitated us
20 separating from England and becoming our own independent
21 nation, spelled out in the Declaration of the Independence is
22 the king's attempt to curtail the right to trial by jury as
23 one of the reasons why we must and felt compelled to become
24 our own independent nation.

25 As a matter of fact, we did, as you well know, become our

1 own independent nation after the Revolution, and shortly
2 thereafter we adopted the governing document for our country,
3 the supreme law of the land, you all know to be the
4 Constitution of the United States.

5 And shortly after the Constitution was ratified, Congress
6 immediately moved to amend the Constitution and add 10
7 amendments. You know those 10 amendments from your days in
8 school as the Bill of Rights. And those 10 amendments were
9 ratified and added to the Constitution in 1791.

10 One of those first 10 amendments, the Seventh Amendment
11 to the U.S. Constitution, guarantees the right to have civil
12 disputes resolved by a jury of your peers, a civil jury trial.

13 So, ladies and gentlemen, since 1791, every American
14 citizen has had a constitutionally guaranteed right to have
15 their civil disputes resolved through trial by jury.

16 I always tell citizens such as yourselves who appear for
17 jury duty like you have this morning that in my personal
18 opinion jury service is the second highest form of public
19 service any American can perform. In my personal view, the
20 highest form of public service for any American are those
21 young men and women that serve in our armed forces.

22 Now, the lawyers are going to address you later this
23 morning, and they're going to ask you various questions. And
24 I want you to understand that they are not seeking to inquire
25 unduly into your personal affairs. Let me say that another

1 way. They're not trying to be nosey, to pry into your
2 personal business. They're simply asking relevant questions
3 to help secure a fair and an impartial jury to hear the
4 evidence in this case.

5 The important thing for each of you to remember, ladies
6 and gentlemen, is that when those questions are asked, as long
7 as your answers are fair -- excuse me, full, complete, and
8 truthful, there are no wrong answers. You can't give a wrong
9 answer as long as your response is full, complete, and
10 truthful.

11 Now, I don't know if it will happen this morning, it
12 rarely does, but it's possible so I want to mention this to
13 you. If there's any question that you're asked as a part of
14 jury selection that you believe is so personal and private
15 that you're not comfortable answering it in front of everyone
16 else on the panel, you always have the option to say, I'd like
17 to talk about that with Judge Gilstrap. And if that's your
18 response, I'll provide an opportunity where you can answer
19 that outside of the presence of the rest of the members of the
20 panel. However, that doesn't come up very often. I'll be
21 surprised if it does this morning, but I want you to know that
22 you have that option.

23 Now, the trial in this case is going to begin later
24 today, as soon as the jury's selected, and I expect that it
25 will run in all likelihood through the end of this week.

1 There is a small chance that it could actually extend over to
2 Monday of next week. I don't anticipate it would go further
3 than that under any scenario that I can envision, but I want
4 you to have an idea of what the timeline is for those of you
5 that would be selected to serve on this jury.

6 If there are any of you on the panel that, if you were
7 selected, either have a surgical procedure scheduled through
8 the remainder of this week or into Monday or there's some
9 other very serious impediment to you being available to be
10 here, that's something I need to know about.

11 If there's anybody that falls in that category, would you
12 raise your hand and let me make a note of it. Okay. Panel
13 Member No. 4 and Panel Member No. 14. Do I see any other
14 hands? No. 24. Thank you, sir. Anybody else? No. 7.

15 4, 7, 14, and 24. All right. Thank you, ladies and
16 gentlemen.

17 Now, at this time I'm going to call for announcements in
18 the case of Optis Technology, LLC, et al. versus Apple, Inc.
19 This is civil Case No. 2:19-CV-066.

20 Counsel, as you give your announcements on the record,
21 please identify those of your trial team that are with you and
22 any corporate representatives you may have in the courtroom at
23 this time.

24 We'll begin with the Plaintiff. What says the Plaintiff?

25 MR. BAXTER: Good morning, Your Honor. I'm Sam

1 Baxter from McKool Smith, along with my law partner, Jennifer
2 Truelove, and my co-counsel, Mr. Jason Sheasby.

3 And we're ready, Your Honor.

4 THE COURT: Thank you.

5 What says the Defendant?

6 MR. MUELLER: Good morning, Your Honor, and good
7 morning, ladies and gentlemen.

8 Joe Mueller, on behalf of Apple. And with me today are
9 Ms. Melissa Smith, Ms. Mindy Sooter, Mr. Mark Selwyn. With us
10 this morning is another member of our team Jamie Laird and
11 finally, Your Honor, representative of Apple, Ms. Heather
12 Mewes.

13 We are ready to proceed, Your Honor.

14 THE COURT: Thank you, counsel. As I've told you,
15 ladies and gentlemen, this is a patent case arising under the
16 patent laws of the United States. I want you to understand
17 that in a previous trial between these same parties, it's
18 already been established that the Defendant Apple, Inc.,
19 infringes certain claims of the Plaintiff's patents. It's
20 also been established in that earlier proceeding that those
21 claims are valid, or said in a more technically correct way,
22 it's been determined that the Plaintiff's claims are not
23 invalid.

24 However, the issue of what money damages are due to the
25 Plaintiff as compensation for that infringement remains yet to

1 be resolved. And that's why you are here. The jury selected
2 in this case will have the responsibility for setting and
3 awarding a fair and reasonable compensation to the Plaintiff
4 Optis in the form of a reasonable royalty for that previously
5 established infringement.

6 Now, having seen the patent video film, which I know
7 you-all saw prepared by the Federal Judicial Center this
8 morning, you already know more about patent litigation than
9 most citizens do when they appear for jury duty. However,
10 during this trial it's likely that you're going to hear about
11 something that's not mentioned in the patent video, and that's
12 that the patents in this suit are referred to as standard and
13 essential patents. And they are sometimes called SEPS. That
14 stands for standard essential patents.

15 SEPS are patents that have been declared to be a part of
16 a standard in a certain field. This standard is set and
17 maintained by a global body to ensure that certain processes
18 and devices operate and work in the same way anywhere in the
19 world.

20 For example, it would be counterproductive, wouldn't make
21 much sense, if the cell phone that you have in here in America
22 only worked in America such that if you got on a plane and
23 flew to London, England, when you got off the plane, your cell
24 phone wouldn't work.

25 To prevent this, standard technologies are created such

1 that communication devices like cell phones interwork across
2 different places in the world and across different brands of
3 devices. Patents relating to such a common and standard
4 technology are recognized as impacting that standard
5 technology and are contributed to and declared by their owners
6 to be essential to that standard. These are called standard
7 essential patents.

8 In this case, the five patents at issue, the asserted
9 patents, have been declared by their owners to be SEPs,
10 standard essential patents, related to the field of wireless
11 communications. In this case one of the groups or global
12 bodies that oversees and maintains this standard is called the
13 European Telecommunications Standards Institute, or ETSI,
14 which you'll hear referred to throughout the trial as ETSI.

15 Since the asserted patents have been declared to be
16 standard essential patents, you'll hear about the standard,
17 the contributions of these patents to the standard, and the
18 work of the governing body, ETSI, in regulating and relating
19 to that standard. That's all as a part of the trial that will
20 take place in this case.

21 Now, as I mentioned earlier, the lawyers for both sides
22 are about to question members of the panel to gather
23 information so that they can exercise their prerogatives and
24 help complete the process of securing eight fair and impartial
25 jurors to hear the evidence in this case. Again, there are no

1 wrong answers to any questions you'll be asked as long as the
2 answers you give are full, complete, and truthful responses.

3 As I mentioned, the lawyers are entitled to ask the
4 questions that they'll ask to help secure a fair and impartial
5 jury. I want you to understand, ladies and gentlemen, if for
6 any reason I think a question asked by any of the lawyers is
7 not proper in any way, I will certainly stop them. But I want
8 you to understand, these are extremely skilled trial lawyers
9 on both sides of this case, and I really don't expect that to
10 happen at all.

11 Now, one thing I want to call your attention to before
12 the lawyers begin with their questions, because it's possible
13 that they're going to ask you about your ability to apply this
14 if you're selected as a juror, is the burden of proof. In a
15 patent case, the jury's called upon to apply a burden of
16 proof. In this particular case, the jury will apply one
17 specific burden of proof, and that's the burden of proof known
18 as the preponderance of the evidence.

19 Now, when responding to lawyers' questions about the
20 burden of proof, I need to instruct you that when a party has
21 a burden of proof on any claim or defense by a preponderance
22 of the evidence, it means that the jury must be persuaded by
23 the credible or believable evidence that that claim or defense
24 is more probably true than not true. Let me say that again:
25 More probably true than not true. Sometimes this is talked

1 about as being the greater weight and degree of credible
2 testimony.

3 Let me give you an example that I hope will be helpful in
4 this regard. If you look in front of our court reporter, you
5 will see that there is a statue of the Lady of Justice. She
6 is blindfolded. She holds in her right hand, lowered at her
7 right side, the unsheathed sword of justice. She holds in her
8 left hand above her the equal and balanced scales of justice.

9 When you think about the burden of proof in this case,
10 the preponderance of the evidence, think about those scales.
11 Both the Plaintiff and the Defendant start out equal. Those
12 scales are balanced. Over the course of this trial, the
13 Plaintiff's going to put their evidence on one side of those
14 scales, the Defendant's going to put their evidence on the
15 other side of the scales.

16 And when all the evidence has been presented and is on
17 one side or the other of those scales, the party who has the
18 burden of proof by a preponderance of the evidence will look
19 at those scales, and if those scales tip in favor of that
20 party who has the burden of proof by a preponderance of the
21 evidence, even if they tip ever so slightly in that party's
22 favor, then that party has met its burden of a preponderance
23 of the evidence.

24 Now, this burden of proof, the preponderance of the
25 evidence that I've just explained to you, it should have no

1 relation and should not be in any way confused by any of you
2 with a separate and different burden of proof that I'm sure
3 you've all heard about in the media and movies and television
4 called beyond a reasonable doubt.

5 Beyond a reasonable doubt is the burden of proof applied
6 in a criminal case. It has absolutely no application
7 whatsoever in a civil case like this. Preponderance of the
8 evidence is not as high a burden of proof as beyond a
9 reasonable doubt. And please keep that in mind as we go
10 through the trial.

11 As I say, I wanted to explain this to you and give you
12 these instructions because I think it's likely that one or
13 more of the lawyers in this case will ask you about your
14 ability to apply that burden of proof to the evidence if
15 you're selected to serve on this jury.

16 Now, before the lawyers address the panel and ask their
17 questions, I'm going to ask each of you to give me the same
18 information about you that I gave you about me when I came out
19 this morning.

20 You should see on the screens in front of you, and you
21 have printed copies, nine specific questions. I'm going to
22 ask each member of the panel one at a time to stand and answer
23 those questions.

24 And this is how we're going to do it, ladies and
25 gentlemen. We have two of our court security officers in the

1 courtroom, and they have two separate hand-held microphones.
2 We're going to begin the process with Panel Member No. 1, Ms.
3 Ross.

4 And when it's that time, Ms. Ross, one of these court
5 security officers will bring you a hand-held microphone. At
6 that time, I'm going to ask you to stand up, I'm going to ask
7 you to take off your mask, use the microphone, give us the
8 answers to those nine questions, hand the microphone back to
9 the court security officer, put your mask back on, and have a
10 seat.

11 And that's how we'll do it with each member of the panel,
12 beginning with Panel Member No. 1 and going through the end of
13 our group. When it's your turn, please stand, wait for the
14 microphone, pull your mask off so that we can see your face as
15 you give the answers, give the answers, put the mask back on,
16 and then have a seat, return the microphone to the court
17 security officer.

18 And later in the process, if you are asked individual
19 questions by the lawyers, you should follow the same
20 process--wait until you get the microphone, stand up, and give
21 us your answers without your mask on, and then put it back on
22 and have a seat.

23 And let me just mention, ladies and gentlemen, this is a
24 big room, we've got a lot of people in here. Many of you are
25 not used to speaking into a microphone. Every time I do this,

1 I have somebody and they hold the microphone out here and I
2 can't hear a word they say. So please hold the microphone
3 close enough so that it will amplify your voice so that
4 everybody in the courtroom can hear your answers to those nine
5 questions and your answers to any other questions that you're
6 asked this morning.

7 So at this time, we'll begin with Panel Member No. 1, Ms.
8 Ross. If you'll stand and give us your answers to those nine
9 questions, please.

10 THE PANEL MEMBER: My name is Vicki Ross. I live in
11 Jefferson. I have no children. I'm not employed. I don't --
12 No. 4 don't apply. I have a GED. I don't have a spouse. And
13 I worked on a DWI.

14 THE COURT: A criminal case, you were on a jury?

15 THE PANEL MEMBER: Yes, sir.

16 THE COURT: How long ago was that?

17 THE PANEL MEMBER: Oh, a long time ago.

18 THE COURT: All right. Now, you said you're not
19 employed. Have you ever worked outside of the home, and if
20 so, what kind of work?

21 THE PANEL MEMBER: House cleaning, and I worked as
22 an election judge.

23 THE COURT: All right. Thank you, ma'am.

24 Next is Panel Member No. 2.

25 THE PANEL MEMBER: Hello. My name is Richard Jirka.

1 I am from Lone Star, Texas. I am currently retired. I worked
2 in the business equipment field for Ricoh USA as a technical
3 trainer. I worked for Ricoh for 20 years, but was in the
4 industry for 41 years. I have an electronic technician
5 diploma from the Ohio Institute of Technology.

6 My wife's name is Helen Jirka. She is a housewife for
7 the last 41 years.

8 And this is my first jury time.

9 THE COURT: Thank you, sir.

10 Next is Panel Member No. 3, Mr. Anderson.

11 THE PANEL MEMBER: My name is J.C. Anderson. I live
12 in Naples, Texas. I work for the city of Hughes Springs, been
13 there 21 years. I have a high school degree.

14 My wife's name is Jenny Anderson. She works for Express
15 Employment, and she's been there 20 years.

16 And I have been on one civil trial.

17 THE COURT: When was that civil trial and where was
18 it?

19 THE PANEL MEMBER: I would say it was 30 years ago,
20 and it was Morris County.

21 THE COURT: All right. And what do you do for the
22 city of Hughes Springs?

23 THE PANEL MEMBER: I am the road person, animal
24 control, and code enforcement.

25 THE COURT: All right, sir. Thank you very much.

1 Next is Panel Member No. 4, Ms. Hamilton.

2 THE PANEL MEMBER: My name is Tina Hamilton. I live
3 in Linden. I have three children. They are all grown. I am
4 currently the court coordinator for Judge Bill Miller and Don
5 Dowd, and I've worked there almost eight years. I have a high
6 school diploma.

7 My husband's name is Kenny Hamilton. He is semiretired,
8 works for a bank, City National Bank out of Sulphur Springs,
9 and he's only been there about three years.

10 I served on a criminal case probably 40 years ago in Cass
11 County.

12 THE COURT: And court coordinator, is that the state
13 district court in Cass County?

14 THE PANEL MEMBER: The district court, yes, sir,
15 Judge Bill Miller, and then County Court at Law, Judge Don
16 Dowd.

17 THE COURT: Thank you, ma'am.

18 Next is No. 5, Ms. Chapman.

19 THE PANEL MEMBER: Good morning. I'm Steffani
20 Chapman, and I live a half mile right outside of Gilmer,
21 Texas, in Upshur County. I have three grown children and one
22 grown stepdaughter.

23 I served the United Methodist Church as a pastor for
24 almost 30 years. I've been retired for three. I have an AA
25 from the University of Houston course of study program for

1 Perkins School of Theology at SMU.

2 My husband's name is Albert Chapman. He works for BMC
3 Software. He's been there 27 years.

4 And I served on a criminal drug case in Harris County in
5 the early '80s.

6 THE COURT: Thank you, ma'am.

7 THE PANEL MEMBER: Uh-huh.

8 Next is Panel Member No. 6, Ms. Hilton.

9 THE PANEL MEMBER: Yes. My name is Judy Hilton. I
10 live in Atlanta, Texas. I have two grown children.

11 I work for the City of Texarkana, Texas, the health
12 department. I am an LVN there in the WIC department there.
13 I've been there about 11 years. I have graduated from the
14 vocational school in Bastrop, Louisiana, in 1990 with a
15 practical nursing degree.

16 My husband's name is Jerry. He works at Graphic
17 Packaging there in Domino. He has worked for that company
18 about four years. It was originally International Paper. And
19 he has been with Graphic Packaging about -- I think about four
20 years.

21 And I've never served on a jury before.

22 THE COURT: Thank you, ma'am.

23 Next is No. 7, Mr. Woods.

24 THE PANEL MEMBER: My name is Mickey Woods. I have
25 three kids. I work for Texas Utility. I'm retired from Texas

1 Utility, worked there 42 years, worked in maintenance for
2 30-something years and then safety department. And I
3 graduated from Johns Christian College.

4 I have a wife named Mary Woods. She worked for the
5 Daingerfield Independent School District. She is also
6 retired. And I think she worked there 32 years.

7 And I have never been on a civil case or criminal case.

8 THE COURT: Thank you, Mr. Woods.

9 Next is No. 8, Mr. Phelps.

10 THE PANEL MEMBER: My name is Phillip Phelps, and I
11 live in Gladewater, Texas. I have two adult daughters.

12 I am self-employed three ways right now. I am a piano
13 tuner, and I own a business -- co-own along with my wife a
14 business in downtown Gladewater, and I'm also a minister. I
15 have done piano tuning about 30 years, have done the store
16 about two and a half years, and ministry for probably about 30
17 years as well.

18 I was -- I'm a graduated -- freshman in college is the
19 highest education.

20 My spouse's name is Rene, and she is co-owner of the
21 business and co-orderer of my life. And how long has she
22 worked there? For 42 years. That's how long we've been
23 married.

24 Prior jury service, I was on a criminal trial,
25 misdemeanor theft in Dallas.

1 THE COURT: What kind of store do you have in
2 Gladewater, sir?

3 THE PANEL MEMBER: It's a vintage antiques, gifts,
4 collectables type store.

5 THE COURT: Thank you very much, sir.

6 Next is Panel Member No. 9, Ms. King.

7 THE PANEL MEMBER: Good morning. My name is Gloria
8 King. I live in Gilmer, Texas. I have no children.

9 My place of employment was for Gilmer ISD. I am a
10 retired teacher of 41 and a half years, serving in my 20th
11 year on the school board there. My educational background is
12 high school, college, and postgraduate. Also have a Master's
13 degree. I mostly taught math and science for fifth graders.

14 My spouse is deceased. His name was Anderson King, and
15 he worked at USI Industries in Longview for about 30 years.

16 I was called to serve on jury duty. This has been
17 several years ago. I don't remember what year. But, anyway,
18 it was settled out of court so it never had a chance to serve.
19 I wasn't called for jury duty most of the time because I was
20 on that grand jury commission where we nominated people to
21 serve on the grand jury and, therefore, I wasn't going to be
22 called on the regular active or the other juries.

23 Thank you very much.

24 THE COURT: Thank you, Ms. King.

25 Next is No. 10, Mr. Goodjoint.

1 THE PANEL MEMBER: Hi, I'm Steredrick Goodjoint. I
2 live in Gilmer, Texas. I have two grown kids.

3 My place of employment is Union Hill ISD. I'm the
4 maintenance and transportation and custodial director there.
5 I've been there 10 years. My education is a high school
6 education.

7 My spouse, Rimanda Goodjoint. We've been married 29
8 years. She has a daycare, home daycare. She's been doing
9 about 12 years.

10 And I've served on a criminal case about 15 years ago.

11 THE COURT: Never a civil case?

12 THE PANEL MEMBER: No.

13 THE COURT: Thank you, sir.

14 Next is No. 11, Ms. George.

15 THE PANEL MEMBER: I am Nancy George, and I live in
16 Marshall. I have seven kids--one birth, six guardianships.
17 I am employed at the Harrison County courthouse. I am justice
18 of the peace. I'm starting my 21st year as justice of the
19 peace, and I was 14 years as court clerk. I have a high
20 school education and some at Kilgore. I'm not married. Seven
21 kids.

22 I have also served on civil and criminal, but it's been
23 25 years since I served on those.

24 THE COURT: Thank you very much.

25 Next is No. 12, Ms. Jordan.

1 THE PANEL MEMBER: Good morning. My name is Tonya
2 Jordan. I live here in Marshall, Texas. I have two adult
3 children.

4 I'm employed by Marshall Independent School District as a
5 teacher. I also co-own Lewis Funeral Home here in Marshall.
6 I've worked at Marshall Independent School District for about
7 21 years. I attended Wyley College.

8 My spouse's name is Billy Jordan. He is retired from
9 Texas Eastman Industries, and he also worked at the
10 funeral home. He's disabled at this time.

11 I have served for a criminal case about 10 years ago. I
12 was selected for a civil case, and they settled out of court.
13 And I've also served as a grand -- on the grand jury.

14 THE COURT: Thank you, ma'am.

15 Next is No. 13.

16 THE PANEL MEMBER: My name is Ramon Gutierrez. I
17 live here in Marshall. I don't have any children.

18 I work for Gecko Pest Control. I do pest control routes
19 when techs are out, and I also work at scheduling in the
20 office. I've been there for about four and a half years. I
21 am a high school graduate, a couple of years of college.

22 My wife's name is Cherokee Norvell. She works for the
23 kitchen for the Marshall school district. She's been there a
24 year now.

25 And I have never been a juror before.

1 THE COURT: Thank you, sir.

2 Next is No. 14, Ms. Berryman.

3 THE PANEL MEMBER: Good morning. My name is Andrea
4 Berryman. I live in Longview, Texas. I have three kids. One
5 of my kids are disabled.

6 I work at Christus Good Shepherd in Longview, been there
7 for 23 years, never been married.

8 I never served on a jury before.

9 THE COURT: And what do you do at Christus Good
10 Shepherd?

11 THE PANEL MEMBER: I work the front desk in
12 radiology.

13 THE COURT: Thank you, ma'am.

14 Next is No. 15, Mr. Emerson.

15 THE PANEL MEMBER: Yes. My name is Richard Emerson.
16 I have two children.

17 My place of employment is First Christian Church in
18 Longview. I've been there starting my 16th year. I have a
19 Doctorate of Ministry from TCU.

20 My spouse's name is Kimberly. She is retired, if you
21 will, but she was an educator in Harrison County-Hallsville as
22 well as East Texas Charter High School as a front desk person.
23 She was there probably for three years, I believe.

24 And I was never on a criminal, but a civil case across
25 the street that really I don't think went anywhere. I didn't

1 get this far in the process when I did the civil.

2 THE COURT: All right, sir. Thank you very much.

3 THE PANEL MEMBER: Thank you.

4 THE COURT: No. 16 is next, Ms. Nixon.

5 THE PANEL MEMBER: My name is Brittany Nixon. I
6 have one child.

7 I work at First National Bank of Hughes Springs. I've
8 been there 10 years. I'm a loan processor. I've got a high
9 school diploma.

10 My spouse is Fred Nixon, and he works at Komatsu,
11 Longview, as an electrician. He's probably been there about
12 10 years.

13 And I served a civil jury here five years ago.

14 THE COURT: In this courtroom?

15 THE PANEL MEMBER: Yes, sir.

16 THE COURT: Do you remember what kind of case it
17 was?

18 THE PANEL MEMBER: It was a cell phone company
19 infringed on another one.

20 THE COURT: A patent case?

21 THE PANEL MEMBER: Yes.

22 THE COURT: All right. Thank you, ma'am.

23 No. 17 is next, Ms. Hale.

24 THE PANEL MEMBER: My name is Sandra Hale, and I
25 live in Atlanta, Texas. I have two adult children.

1 I am retired at the moment, and my previous employment
2 was with -- well, I started with the savings and loan and
3 ended up with a bank. And I was -- my tenure there was 29
4 years. How long -- I worked there for 29 years. My
5 educational background was high school.

6 My spouse's name is Jeffrey Hale, and he was employed by
7 Southwestern Electric Power Company for over 33 years, and he
8 retired. And now he is a supervisor for the security
9 department at the Christus St. Michael's in Atlanta, and he's
10 been there nine years.

11 And, yes, I have served on a civil and a criminal case.

12 THE COURT: Tell us when and where that was, please.

13 THE PANEL MEMBER: Pardon me?

14 THE COURT: When and where did you serve on a civil
15 jury before?

16 THE PANEL MEMBER: In New Boston, Texas.

17 THE COURT: How long ago, ma'am? How long ago has
18 that been, ma'am?

19 THE PANEL MEMBER: It has been probably about 15, 20
20 years ago.

21 THE COURT: All right. Thank you very much.

22 THE PANEL MEMBER: I lived in Texarkana then.

23 THE COURT: Thank you, ma'am.

24 Next is No. 18, Ms. McDonald.

25 THE PANEL MEMBER: Hello. My name is Tammy

1 McDonald. I live here in Marshall, Texas. I have two grown
2 children, one here on earth, one in heaven.

3 I work at shoe department, Encore. I've been there two
4 years. High school education.

5 My husband's name is Calvin McDonald. He works for
6 Partner Industrial at the Eastman plant in Longview, Texas.
7 He's been there about 17 years.

8 And I've never served on a jury.

9 THE COURT: Thank you, ma'am.

10 Next is No. 19.

11 THE PANEL MEMBER: Good morning. My name is Andreas
12 Floyd. I live in Gladewater. I have one child. I work for
13 High Touch Delivery, been there for like three years. My
14 highest education is some college.

15 And I've never provided any jury services.

16 THE COURT: And you're not married. Is that right,
17 sir?

18 THE PANEL MEMBER: No, sir.

19 THE COURT: Thank you very much.

20 No. 20 is next, Ms. Hudgins?

21 THE PANEL MEMBER: My name is Tina Hudgins. I have
22 two children, 10 and 9. I work at Hallsville ISD as a third
23 grade teacher. I'm starting my fifth year there. I have a
24 Bachelor's degree in elementary education.

25 My husband's name is Michael Hudgins. He works at Texas

1 Oncology, Longview Cancer Center, as a pharmacist. He's
2 worked there for 11 years.

3 And I have never been -- served on a jury.

4 THE COURT: Thank you, ma'am.

5 No. 21 is next, Ms. Graham.

6 THE PANEL MEMBER: Good morning. My name is Vicki
7 Graham. I live in Pittsburg, Texas. I have two grown
8 children.

9 I'm retired from CB&I in Tyler, Texas. I worked there
10 for 11 and a half years. I have an associate's degree from
11 Tyler Junior College.

12 My spouse is deceased, and I have never served on a jury.

13 THE COURT: And tell me what you did at CB&I in
14 Tyler.

15 THE PANEL MEMBER: I worked in the materials
16 department as a clerical work.

17 THE COURT: All right. Thank you very much, ma'am.

18 No. 22 is next, Mr. Fenton.

19 THE PANEL MEMBER: I'm Ernest Fenton. I have five
20 boys. I live in Gilmer. I'm retired from Crosby Lebus
21 (phon.). I work now at the Gilmer ISD as a custodian. I've
22 been there going on three years. I have a high school
23 education.

24 My spouse is Kathy. She's a stay-at-home mom, has been
25 for 37 years.

1 And my previous jury duty is I served on an Upshur County
2 grand jury, and this has been probably about 10 to 12 years
3 ago.

4 THE COURT: All right, sir. Thank you very much.
5 No. 23 is next, Mr. Givens?

6 THE PANEL MEMBER: Yes. My name is John Givens. I
7 live in Jefferson, Texas. I have two children.

8 I am the senior pastor at New Prospect Baptist Church for
9 the past two years. Also the director of sales and business
10 development for Heritage Home Health and Hospice, and director
11 of IT. I've been there five years. I have a degree in
12 nursing and pursuing a degree in theology.

13 My spouse's name is Karen Givens. She's been a homemaker
14 for 22 years.

15 And I never served on a jury.

16 THE COURT: All right, sir. Thank you very much.

17 Next is Panel Member No. 24, Mr. James.

18 THE PANEL MEMBER: My name is Jerold James. I live
19 in Atlanta, Texas. No children. Red River Army Depot,
20 retired 33 years.

21 THE COURT: Mr. James, hold that microphone a little
22 closer, please, sir, and tell me again what your work
23 employment history was.

24 THE PANEL MEMBER: Red River Army Depot, retired 33
25 years.

1 THE COURT: Thank you, sir. What about your
2 education?

3 THE PANEL MEMBER: High school. Not married.

4 THE COURT: What's your spouse's name and does she
5 work outside the home?

6 THE PANEL MEMBER: Don't have one.

7 THE COURT: Don't have one. Any prior jury duty?

8 THE PANEL MEMBER: Civil in Atlanta, Texas.

9 THE COURT: How long ago was that, sir?

10 THE PANEL MEMBER: Twenty years.

11 THE COURT: Okay. Thank you very much, Mr. James.

12 Next is Panel Member No. 25, Mr. Arnold.

13 THE PANEL MEMBER: My name is Brian Arnold. I live
14 in Hallsville, Texas. I have two boys. I work at North
15 Cylinder, been there about eight years. I do industrial
16 maintenance. I got a GED.

17 My wife's name is Maria. She is a housewife.

18 And I've never served on a jury trial.

19 THE COURT: Thank you, sir.

20 No. 26, Mr. Cobb, is next.

21 THE PANEL MEMBER: My name is Tyler Cobb. I don't
22 have any children. I live in Naples, Texas. I work at Papa
23 Nacho. It's a Mexican restaurant. I've waited tables for
24 about four years. My education is a high school diploma.

25 I have no spouse, and I've never done jury service.

1 THE COURT: All right. Thank you very much.

2 No. 27 is next, Mr. Oney.

3 THE PANEL MEMBER: Willard Oney. Live in Marshall,
4 Texas. I have two grown children. I work for Fluid Disposal
5 Specialties. I'm a shop superintendent. I've been there for
6 about 15 years. I got a high school diploma.

7 My wife is Seeny Oney. She works for Fluid Disposal.
8 She does the time, and she's been there about 13 years.

9 And I was on a grand jury about five years ago.

10 THE COURT: All right. Thank you very much.

11 No. 28 is next, Ms. Brewer.

12 THE PANEL MEMBER: My name is Laura Brewer, and I
13 live in East Mountain, Texas. I have two grown children.

14 And I work at Spring Hill ISD. I've been there two
15 weeks, left Union Grove ISD after 21 years as a
16 paraprofessional in the special education department. I have
17 a high school diploma.

18 My spouse's name is Terry Brewer. He works at Texas
19 Eastman, and we also own Brewer Auto Sales and Body Shop and
20 Brewer Feed and Hay Sales. We've lived -- he's been at Texas
21 Eastman for 10 years.

22 And I have no prior jury service.

23 THE COURT: Thank you, ma'am.

24 Thank you, ladies and gentlemen. Now, I need to say a
25 couple of more things to you before I turn the questioning

1 over to the lawyers.

2 The jurors that are actually selected in this case will
3 serve in the role as the judges of the facts, and the jurors
4 selected will make the sole determination about what the facts
5 are in this case.

6 Now, my job as the judge is to rule on questions of law,
7 evidence, and procedure that might arise during the trial, to
8 maintain the decorum of the courtroom, and to oversee an
9 efficient flow of the evidence and the trial process.

10 Also I want to say a couple of things to you about our
11 judicial system that hopefully will put things in a proper
12 perspective for everyone.

13 In every jury trial, besides the parties themselves,
14 there are always three participants--the jury, the judge, and
15 the lawyers. Now, with regard to the lawyers, I think it's
16 important for each of you to understand that our judicial
17 system in this country is an adversary system, which simply
18 means that during the course of the trial each of the parties
19 through their counsel will seek to present their respective
20 cases to the jury in the very best light possible.

21 Now, it's no surprise to any of you that lawyers are
22 sometimes criticized in the media, but the Court's observed
23 that some of that criticism results from a basic
24 misunderstanding of our adversary system in which the lawyers
25 act as advocates for the competing parties. And as an

1 advocate, a lawyer is ethically and legally obligated to
2 zealously assert his or her client's position under the rules
3 of our adversary system.

4 And by presenting the best case possible on behalf of
5 their clients, the lawyers hopefully will enable the jury to
6 better weigh the relevant evidence, to determine the truth,
7 and to arrive at a just verdict based on that evidence. This
8 system, this adversary system of justice, has served our
9 nation well for 200 years and longer, and our lawyers in this
10 country have and will be in the future an integral part of the
11 process.

12 So as we go forward, even though it's possible that over
13 the course of the trial I might frown or roll my eyes from
14 time to time at the lawyers, I'm simply trying to make sure
15 that their advocacy doesn't get outside of the bounds of our
16 adversary system. But I think it's important for each of you
17 to understand this and to keep it in mind as we go forward.

18 Also, ladies and gentlemen, those of you that are
19 selected to serve on this jury, I want you to understand that
20 during the course of the trial I am going to do my very best
21 to make sure that no one on the jury knows what I think about
22 the evidence in this case because determining the facts based
23 on the evidence is the jury's job. It is not my job.

24 Therefore, those of you selected on the jury should not
25 take anything you hear or see or think you hear or see as

1 coming from me as something to consider in determining what
2 the ultimate facts are in this case.

3 All right. At this time the lawyers for the parties are
4 going to address the venire panel.

5 Mr. Baxter, you may address the panel on behalf of
6 Plaintiff. Would you like a warning on your time, sir?

7 MR. BAXTER: I would, Your Honor. If you could call
8 me after five and one minute remaining.

9 THE COURT: Five minutes remaining and one minute
10 remaining.

11 MR. BAXTER: Yes, Your Honor, if the Court please.

12 THE COURT: Proceed when you are ready, sir.

13 MR. BAXTER: Thank you.

14 Thank you, Your Honor. May it please the Court.

15 Good morning, ladies and gentlemen. As I told you, my
16 name is Sam Baxter. I practice law here in Marshall, Texas.
17 I've been here for 51 years in the legal business. I work for
18 a law firm called McKool Smith. We're headquartered next door
19 in, oddly enough, the Baxter Building.

20 I am married. My wife's name is Lauren Parish, or Judge
21 Lauren Parish. We have four children, the oldest of which is
22 from Brazil. Andrew works here in town. Matthew, who is from
23 Thailand, and lives in the Fort Worth area. Sophie, who is
24 from India and who lives in Thailand right now. And Keyton
25 Boggs, who is my stepson, who is the -- one of the band

1 directors at the Hallsville band situation.

2 So the first thing I've got to do is talk to some of you
3 that live in Upshur County or Marion County and ask, how many
4 of you know my wife, Judge Lauren Parish? All right.

5 Any of you that have been in Judge Parish's courtroom
6 have anything that would affect you in this case? I happen to
7 know that she's a very good judge and was very friendly with
8 the jurors, but every once in a while there was a criminal
9 case where there probably wasn't a good outcome for the
10 defendant. Does that pose a problem for anyone?

11 No. 9, Ms. King, did you serve in Judge Parish's court?

12 THE PANEL MEMBER: I was called to serve on the
13 grand jury team to select grand jurors.

14 MR. BAXTER: You were a commissioner.

15 THE PANEL MEMBER: I was on the commission.

16 MR. BAXTER: Yes, ma'am?

17 THE PANEL MEMBER: That we selected people to serve
18 on the grand jury.

19 MR. BAXTER: How was she as a judge?

20 THE PANEL MEMBER: I really never sat in her
21 court --

22 MR. BAXTER: Okay?

23 THE PANEL MEMBER: -- at any time.

24 MR. BAXTER: All right.

25 THE PANEL MEMBER: I will confess, this is not a

1 biased statement, I was her sixth grade science teacher. So
2 what you do --

3 MR. BAXTER: How did she do in the sixth grade?

4 THE PANEL MEMBER: Of course. But, yeah, that
5 doesn't affect my outcome.

6 MR. BAXTER: Did you know her father, Wilbur Parish?

7 THE PANEL MEMBER: Yes, I knew him, but I never
8 served in his court, either.

9 MR. BAXTER: Yes, ma'am. Thank you very much, Ms.
10 King.

11 Who else had the opportunity to meet Judge Parish in the
12 court setting? Back here behind you, yes, sir. No. 22, Mr.
13 Fell ton?

14 THE PANEL MEMBER: I did serve on the grand jury,
15 but I'm not sure if she was the judge or not.

16 MR. BAXTER: How long ago?

17 THE PANEL MEMBER: This was probably about 15 years
18 ago or 12 years ago.

19 MR. BAXTER: Yes, sir. I will assure you, she was
20 the judge. She sat there for 24 years.

21 THE PANEL MEMBER: All right. She also -- my
22 adoption for my two boys, she conducted that.

23 MR. BAXTER: Did she do a good job on that?

24 THE PANEL MEMBER: Excellent.

25 MR. BAXTER: Thank you very much. I appreciate it.

1 Who else knows Judge Parish? Anyone else? No. 5. I'm
2 sorry. I skipped you, Ms. Chapman -- Reverend Chapman, I
3 should say.

4 THE PANEL MEMBER: I did not know her as a judge. I
5 knew her as -- through a church relationship.

6 MR. BAXTER: All right. Anything about that's a
7 problem, Ms. Chapman?

8 THE PANEL MEMBER: Not at all.

9 MR. BAXTER: Okay. Thank you very much.

10 And those -- the most frequently asked question I have
11 about Her Honor is, do I have to stand up when she comes in
12 the courtroom? And the answer is yes. If she comes in the
13 living room, I stand up.

14 Judge Gilstrap has said that we have a very brief period
15 of time to talk a little bit about the case, and as he told
16 you, this is a damages only case. There won't be any other
17 issues in this case.

18 But let me talk to you about my client PanOptis just a
19 moment. PanOptis is headquartered in Plano, Texas, and it was
20 formed because a consortium of tech companies, and you see
21 them here on the screen, Ericsson, Samsung, Panasonic, and LG,
22 had a whole bunch of patents involving LTE, which is a phone
23 system that, if you look on your phone, sometimes it will say
24 LTE on it. And it stands for long-term evolution. And they
25 dedicated patents, some more than others, to Panasonic for

1 Panasonic to monetize their patents.

2 If I can see the next slide.

3 The Patents-in-Suit, five of them, basically have to do
4 with stabilization of the LTE network and increasing speed of
5 uploads and downloads. And you're going to hear about that if
6 you are on the jury.

7 It also turns out, if I can see the next one, please, as
8 Judge Gilstrap told you, these patents are known as SEP
9 patents, which stands for standard essential patents. And
10 you're going to hear a lot about the standard in this case,
11 how it got set, how important it is. But these patents are
12 all standard essential patents, and I don't think anyone will
13 contradict that in this case.

14 Now, on the other side is Apple, and the Apple lawyers,
15 as you saw, the ones that you might know is Melissa Smith.
16 Ms. Smith practices law here in Marshall and in Tyler; Joe
17 Mueller, who is from Boston; and Mr. Mark Selwyn, who is from
18 California.

19 Anybody know Ms. Smith or perchance any of the other
20 lawyers? You do, ma'am? Okay. Anybody know Ms. Smith? You
21 do, No. 11. Oh, you know, Judge, with that mask on, you look
22 different.

23 Judge, I think I can say this without contradiction,
24 without the exception of His Honor, the most important and
25 powerful judge in Harrison County because you deal with

1 speeding tickets for my children. Anything about that, Judge,
2 that I've got to pay the price for today?

3 THE PANEL MEMBER: No, sir.

4 MR. BAXTER: All right. You know Ms. Smith?

5 THE PANEL MEMBER: I know Ms. Smith just casually.

6 MR. BAXTER: Yes, ma'am. Anything about that that's
7 an issue, Judge?

8 THE PANEL MEMBER: No, sir.

9 MR. BAXTER: Thank you.

10 Who's got an iPhone on the jury panel? Can I see your
11 hands? Now, we think iPhones are great. Of course, one of
12 reasons we may think are great is because of the technology.

13 But is there anybody that feels like that Apple is such a
14 big company and a good company, that you simply couldn't be
15 fair in this case, that Apple somehow has a leg up? Anybody
16 feel that way?

17 No. 13, Mr. Gutierrez, tell me what you feel about that,
18 sir.

19 THE PANEL MEMBER: Just what you mentioned, that I
20 think Apple is a very big company, trillion-dollar company,
21 and it's just difficult to fight battles with them.

22 MR. BAXTER: Anything about that, Mr. Gutierrez,
23 that would cause you any problem on sitting on this jury?

24 THE PANEL MEMBER: No, sir.

25 MR. BAXTER: Okay. All right. I know I've got one

1 juror, Ms. Hudgins, No. 20? Ms. Hudgins, I read your
2 questionnaire, which we appreciate y'all filling out for us,
3 and I noticed that you said that, while you use a Samsung
4 phone, that you feel very positive about Apple. Is that
5 right?

6 THE PANEL MEMBER: I don't have a Samsung phone. I
7 do have an iPhone.

8 MR. BAXTER: Okay.

9 THE PANEL MEMBER: We have other Samsung
10 products--refrigerator, stove, things like that.

11 MR. BAXTER: Yes, ma'am. Anything about being
12 positive for Apple, would you be leaning toward Apple's side
13 if you sat on this jury?

14 THE PANEL MEMBER: No, sir.

15 MR. BAXTER: Nothing about that would cause you any
16 problem?

17 THE PANEL MEMBER: No, sir.

18 MR. BAXTER: Okay. Thank you very much.

19 Who's got an iPad or an iWatch? Anybody? Everybody
20 happy with those products?

21 Now, the inventors of these patents work for the various
22 technology companies that you saw listed earlier. Is there
23 anything with a company owning patents that somebody else
24 developed, does someone think, well, only the inventor can
25 really have anything to do with those patents, and if you buy

1 a patent, and patents are a fungible entity, they are for sale
2 like property and they can change hands, is there anybody who
3 thinks there's a problem that PanOptis didn't actually develop
4 those products but are in the business of licensing those
5 products to other companies? Anybody think that's a problem?

6 Anybody here able to work on computers or can write
7 computer code or has anything to do in the computer business?

8 Yes, sir. Mr. Givens?

9 THE PANEL MEMBER: Yes, sir.

10 MR. BAXTER: I understand, sir, you are an IT
11 director?

12 THE PANEL MEMBER: I'm also the director of IT for
13 my company.

14 MR. BAXTER: Tell me what you do about that.

15 THE PANEL MEMBER: We actually have, I call it, a
16 fleet. We have -- we use iPads for documentation in the
17 field. We also have some Android devices. We use charting
18 software, logistical software, tracking software, and I manage
19 all of that.

20 MR. BAXTER: Do you understand anything about phone
21 networks, Mr. Givens?

22 THE PANEL MEMBER: Yes, sir.

23 MR. BAXTER: Okay. You know about LTE?

24 THE PANEL MEMBER: Yes, sir.

25 MR. BAXTER: What experience have you had working

1 with LTE?

2 THE PANEL MEMBER: Just with signal strength and
3 increased ability. A lot of our nurses are working in rural
4 environments, and they need access to patients' information,
5 patients' records.

6 MR. BAXTER: Is that information then uploaded or
7 downloaded or whichever way that goes?

8 THE PANEL MEMBER: Correct, yes, sir.

9 MR. BAXTER: Do you count on the system being fast
10 and stable that does that for you?

11 THE PANEL MEMBER: Yes, sir.

12 MR. BAXTER: Is that important for you?

13 THE PANEL MEMBER: Yes, sir.

14 MR. BAXTER: If the documents won't load or they sit
15 there and spin, is that a problem for your medical
16 professionals out in the field?

17 THE PANEL MEMBER: Of course, because they wouldn't
18 have access to the patients' records.

19 MR. BAXTER: And you want that to move as fast as it
20 can?

21 THE PANEL MEMBER: Certainly.

22 MR. BAXTER: Does anybody feel different than Mr.
23 Givens does, that it's important that uploads and downloads
24 move smoothly, they move quickly, and they are dependable?
25 Anybody disagree with that, that that's an important feature

1 of whatever phone you have that's on the LTE network?

2 Thank you, Mr. Givens. I appreciate it.

3 Is there anybody on the panel that's ever applied for a
4 patent? Back here, No. 28. Ms. Brewer?

5 THE PANEL MEMBER: Yes.

6 MR. BAXTER: What's your experience with patents?

7 THE PANEL MEMBER: My husband applied for a patent
8 this past year, and we have a patent pending.

9 MR. BAXTER: Okay. Did you hire a law firm to help
10 you with that?

11 THE PANEL MEMBER: Yes, sir, one out of Dallas.

12 MR. BAXTER: Has it been an interesting process?

13 THE PANEL MEMBER: Pretty interesting, long, slow
14 process.

15 MR. BAXTER: Anything about that, Ms. Brewer, that
16 you think would come to bear in this case?

17 THE PANEL MEMBER: No.

18 MR. BAXTER: Thank you, ma'am. Anybody who works
19 for a company that has intellectual property, has patents or
20 trade secrets or copyrights or anything of that sort? Anybody
21 at all?

22 UNIDENTIFIED PANEL MEMBER: I'm sure --

23 MR. BAXTER: And remind me, again, who you work for?

24 THE PANEL MEMBER: I used to work for Ricoh USA.

25 MR. BAXTER: The copying company?

1 THE PANEL MEMBER: And I am sure there are many
2 patents they own at this point.

3 MR. BAXTER: Do you know if they tried to enforce
4 their patents if they own them?

5 THE PANEL MEMBER: I have no idea. It was outside
6 my role.

7 MR. BAXTER: I appreciate that.

8 Anybody else work for a company, Texas Eastman or anyone
9 else that has patents?

10 If someone has a dispute in the patent area, does anybody
11 think it would be wrong to come to court to get that dispute
12 resolved?

13 Is there anybody that is a member of any group that is
14 opposed to lawsuits? Anybody at all? Different question.
15 How many people think there are too many lawsuits? Anybody at
16 all? No? Good.

17 Who on the panel uses their phone to browse the internet?
18 How about looking at YouTube, downloading YouTube videos? Who
19 does that? If you're doing that, do you hope that your phone
20 doesn't freeze up? How many are excited when the phone
21 freezes up? Anybody at all? All right.

22 Now, Judge Gilstrap talked to you about the burden of
23 proof, and he told you that the burden in this case over
24 damages is by a preponderance of the evidence. But when we
25 start out, everybody's equal. You haven't heard any evidence

1 yesterday, you won't hear any this morning, and so everybody
2 starts off on an even footing.

3 But it turns out that in this case, as in all civil
4 cases, the plaintiff has the burden of proof going forward and
5 proving its case. In this case it's going to be talking to
6 you about damages and proving to you what the damage number
7 ought to be that Apple owes PanOptis.

8 That burden is by a preponderance of the evidence, and as
9 Judge Gilstrap said, if you looked at the scales of justice,
10 they are equal. But if you were to stack evidence on one side
11 or the other and, one side had just a fraction more evidence,
12 it tilts the scales, as he put it, ever so slightly, then that
13 is the burden of proof that we have. It's by a preponderance
14 of the evidence.

15 And so as we go forward in thinking about damages, it is
16 in the context of, has the Plaintiff proved its case by that
17 one more BB, that one more piece of evidence.

18 If I can see the next slide, please.

19 This is what I believe Judge Gilstrap just read to you,
20 and I'm confident he will read this to you again, that
21 preponderance of the evidence means you must be persuaded by
22 the evidence that the claim or affirmative defense is more
23 probably true than not.

24 Is there anybody that has a problem with that, that you
25 think in a damage case somehow the burden ought to be higher,

1 that it ought to be that beyond a reasonable doubt or some
2 other burden of proof?

3 Does anybody feel like they could not follow Judge
4 Gilstrap's charge to you on the law, and if he tells you more
5 probably true than not, is there anybody that couldn't follow
6 that? Anybody at all?

7 Now, in speaking of damages, one of the things that came
8 to mind was if someone took some of your property and you find
9 out who it is, and let's suppose it's a gun, they took a
10 rifle, and they said, well, I sold the rifle and I only got
11 \$10 for it, so here I'm going to give you the \$10 and we'll
12 call it even. Now, how many people think that's fair?

13 How many people think that if the person that took the
14 property said, well, I'll give you 50 percent of the value
15 but, you know, it was old, it probably wasn't very good, and
16 so you're only going to get 50 percent, how many people think
17 that's fair?

18 How many people think that if someone takes your property
19 and you find out who it is, that you either get to recover
20 your property or they have to pay you for it and they have to
21 pay full damages? Is there anybody that has a problem with
22 that?

23 If you don't, if you think full damages are the measure
24 that someone ought to pay if they take someone's property,
25 raise your hand for me. Is there anybody who thinks it ought

1 to be less than full damages? If it is full damages, raise
2 your hand for me. All right.

3 Now, in this case --

4 If I can see the next slide, please.

5 In this case there is going to be some evidence that
6 you're going to hear, Judge Gilstrap's going to instruct you
7 about it, called a hypothetical negotiation. And you're going
8 to hear damage experts talk about that the law requires damage
9 experts to construct a hypothetical negotiation between the
10 parties, and there are 14 or 15 factors you're going to hear
11 about those.

12 The negotiation didn't actually take place. It is
13 required by the law for damage experts to consider these
14 factors as they reach their damage number. They will tell you
15 there are three things that are important. One is the parties
16 have to reach an agreement. They can't walk away. Number
17 two, the patents are valid and infringed. And, number three,
18 all the parties have all the relevant knowledge, both in the
19 past and in the future. It's called the book of wisdom, and
20 so all the documents that people have and whatever evidence
21 there is, that is known at this hypothetical negotiation.

22 In this case, because that negotiation will take place in
23 2012, it will be between Apple and the owners at that time of
24 the patents, which are the technology companies.

25 Does anybody have a problem with that--that PanOptis will

1 not be at that table but, rather, the royalties negotiated
2 would be in the -- and the damages negotiated would be between
3 the tech companies and Apple. Anybody got a problem with
4 that?

5 Let's see the next slide if we could, please.

6 Now, there is a statute that Judge Gilstrap's going to
7 tell you about, and this is from United States Code, and it
8 says, upon finding for the claimant, this is in a patent case,
9 the court shall award the claimant damages adequate to
10 compensate for the infringement, but in no event less than a
11 reasonable royalty for the use made of the invention.

12 This is what's known as the reasonable royalty
13 calculation. If Judge Gilstrap tells you that that's how you
14 determine damages, that the person that owns the patent gets
15 paid in no event less than a reasonable royalty, does anybody
16 have any trouble with that? Anybody at all?

17 Let me see the next slide, if I could, please.

18 On top of that, you are going to hear a concept known as
19 FRAND.

20 If I can see the next slide.

21 And that stands for fair, reasonable, and
22 nondiscriminatory. And that is because these patents are
23 standard essential patents and they've been dedicated to what
24 Judge Gilstrap described to you as a standard setting body
25 known as ETSI. And if you dedicate the patents to ETSI, and

1 these patents have all been dedicated to ETSI, then the damage
2 number has to be fair, reasonable, and nondiscriminatory. And
3 you are going to hear a lot of evidence about that in this
4 case about what the rate ought to be.

5 But is there anybody that has ever heard of FRAND, knows
6 anything about FRAND, or has any problems with applying the
7 standard of fair, reasonable, and nondiscriminatory when
8 figuring out what a reasonable royalty ought to be? Anybody
9 at all?

10 Let me see the next slide, if I could, please, Ms.
11 Truelove.

12 This is the amount of damages that we believe that Apple
13 owes PanOptis in this case for the five patents: \$506
14 million. And that's a lot of money. As you can tell, this is
15 a big, important case.

16 Now, I'm not going to ask you if you can or will give
17 PanOptis that much money at the end of this trial. All I want
18 to know is, because you now haven't heard any evidence, is
19 there anybody that sees that number and says, nope, can't do
20 that, not going to do it, too much money? Anybody at all?

21 Can I get everyone to tell me if in fact -- that if the
22 evidence by a preponderance of the evidence points toward this
23 being the fair and reasonable number for the royalty in this
24 case, does anybody have any hesitation of writing that number
25 down on the jury form? Anybody at all?

1 Mr. Anderson, how about you, sir? You're sitting there
2 on the front row. You get on this jury and you see numbers
3 thrown about in the hundreds of millions of dollars, is that a
4 problem?

5 THE PANEL MEMBER: Not to me.

6 MR. BAXTER: All right. If the evidence pointed to
7 that, can you say, yep, that's the number that it ought to be?

8 THE PANEL MEMBER: Yes, sir.

9 MR. BAXTER: Okay. All right.

10 Reverend Chapman, I don't want to say this is like
11 passing the collection plate, but it is something you are
12 familiar with of the value of things. Tell me if that number
13 is a problem for you.

14 THE PANEL MEMBER: No, it's not.

15 MR. BAXTER: If the evidence by a preponderance says
16 that is the right number, would you vote to put that down on
17 the verdict form?

18 THE PANEL MEMBER: Yes, I could do that.

19 MR. BAXTER: All right. Is there anybody that has a
20 problem with that?

21 No. 15, Reverend Emerson, I'm going to put you in the
22 same boat as Ms. Chapman. Is that number a problem for you?

23 THE PANEL MEMBER: No, it is not. But I will
24 honestly say 10 percent, that could do a lot of good for the
25 church.

1 MR. BAXTER: I'm going to talk to my client about
2 that.

3 THE PANEL MEMBER: So I do not have a problem with
4 that, sir.

5 MR. BAXTER: Okay. Not anything that says, no, no,
6 too much money?

7 THE PANEL MEMBER: I will personally say that's a
8 lot of money.

9 MR. BAXTER: It is a lot of money.

10 THE PANEL MEMBER: It's a lot of money. If the case
11 states that that's the right number without a preponderance, I
12 have no problem with it.

13 MR. BAXTER: So if the experts or the technical
14 people or the representative from PanOptis convince you by
15 that preponderance of the evidence that is the right number,
16 no problem with you.

17 THE PANEL MEMBER: No problem.

18 MR. BAXTER: No problem?

19 THE PANEL MEMBER: No, sir.

20 MR. BAXTER: Thank you, Reverend. Is there
21 anybody -- now that you've seen the number for a little while,
22 and it's a lot of money, is there anybody that's got a problem
23 with it? Not whether you will commit to give it to me today
24 because you haven't heard any evidence.

25 THE COURT: You have five minutes remaining.

1 MR. BAXTER: Thank you, Your Honor.

2 But you can tell me that if the evidence by a
3 preponderance, by that one more BB, says that's the right
4 number, is there anybody that couldn't write it down, wouldn't
5 write it down on the basis that it's too much money? Anybody
6 at all? All right. Thank you.

7 If I can see the next slide, please.

8 The judge has also talked to you about this, and I think
9 this is going to be very important in this case. And he told
10 you that if you're on this jury, you are the sole judge of the
11 credibility of the witnesses--that is, you are going to
12 determine if that witness has been forthright with you,
13 answered the questions that they were asked, and answered them
14 in a forthright manner, and that their testimony was
15 believable.

16 You're going to hear a lot of experts in this case, some
17 on technical issues, some on damage issues, and I will tell
18 you that sometimes that testimony can get a little convoluted,
19 and it can be difficult.

20 What I'm asking you, is there anybody that thinks that at
21 the end of the day you couldn't sit in the jury box and listen
22 to and watch an expert and, either through the consistency of
23 what they say or their body language or the method in which
24 they answered the questions or how forthright they appear to
25 be coming, is there anybody that says, well, really I

1 shouldn't judge their credibility, I can't tell?

2 Is there anybody that has any hesitation about judging
3 the credibility of the witnesses? Anybody at all?

4 Is there anybody that has any reservation about serving
5 on this jury? I know there are four of you that may have some
6 conflicts, and I'm not talking about that. I'm talking about
7 whether or not just being on the jury, you feel like, well, I
8 shouldn't do it. Is there some reason that you feel like you
9 couldn't serve on this jury? Anybody at all?

10 Ms. Jordan, you've got a new school, do you? Are you
11 going to a new school. Are you going to William E. Travis?

12 THE PANEL MEMBER: Yes.

13 MR. BAXTER: You're out there with Ms. Johnson?

14 THE PANEL MEMBER: Yes.

15 MR. BAXTER: The best principal in Marshall?

16 THE PANEL MEMBER: Of course.

17 MR. BAXTER: What are you going to teach out there,
18 Ms. Jordan?

19 THE PANEL MEMBER: This year I'm moving to math
20 interventionist.

21 MR. BAXTER: And tell me what that is.

22 THE PANEL MEMBER: This year is my first year. I
23 will be doing pull out once we get the assessments done, and I
24 will be serving small groups of students who need additional
25 assistance in math to pull them up to grade level.

1 MR. BAXTER: Do you know about Saturday school out
2 at William B. Travis?

3 THE PANEL MEMBER: Yes.

4 MR. BAXTER: Do you plan on being involved in that?

5 THE PANEL MEMBER: Yes, I do.

6 MR. BAXTER: Just for the education of the panel,
7 tell them what Saturday school is.

8 THE PANEL MEMBER: Saturday school is when we come
9 out and -- bring the students who need the additional
10 assistance, and the teachers come out and assist those
11 students. And we do things that are not traditional in the
12 classroom to give them different opportunities to learn in
13 multiple ways.

14 MR. BAXTER: Okay. Thank you, ma'am.

15 I appreciate it. Is there anybody that knows any reason
16 why they could not be a fair and impartial jury in this case?
17 Anybody at all? Because of the money? Because it's a damages
18 only trial? Anything of the sort? Or you just don't like the
19 judicial system for whatever reason? Don't like lawsuits,
20 don't like being here, whatever it is. Is there anybody that
21 has any issue whatsoever?

22 If not, Your Honor, I thank you very much for your time.

23 THE COURT: All right. Ms. Smith, you may address
24 the panel on behalf of the Defendant. Would you like a
25 warning on your time?

1 MS. SMITH: I would, Your Honor, five minutes,
2 please.

3 THE COURT: All right. I'll warn you when you have
4 five minutes remaining.

5 MS. SMITH: Thank you.

6 THE COURT: You may proceed when you are ready.

7 MS. SMITH: May it please the Court.

8 Good morning, everybody. Again, my name is Melissa
9 Smith, and I'm here today to represent Apple along with Mr.
10 Mueller.

11 I will start this morning with the most important thing
12 that I'll do all day, and that's to thank you. I know when
13 you get a jury summons in the mail, it's probably not good
14 news. I know that you have many obligations, and every minute
15 that you spend here is a minute that you don't have for your
16 family, your friends, your work.

17 I also know that some of you started your service last
18 week when you took time to fill out this jury questionnaire.
19 And so we appreciate -- on behalf of Apple, we appreciate your
20 time today and preparation for today.

21 Now, I'll do as His Honor and the other lawyers have
22 done, I'll tell you a little bit about myself. I went to the
23 University of Texas undergrad, and then as Judge Gilstrap did,
24 I went to Baylor Law School. That's been 24 years ago.

25 I moved -- I went straight from Baylor to Jefferson,

1 Texas, and I took a job here with a firm in Marshall. The
2 gentleman that hired me, his name is Gil Gillam. He has been
3 my partner. At some point I convinced him that I should be
4 his partner rather than his associate, and we've been partners
5 for the last 24 years.

6 We have a firm called Gillam & Smith. I'm the Smith.
7 And some of you probably drove by it this morning on the way
8 to the courthouse, it sits right behind this courthouse.

9 Personally, I'm married. My husband's name is Steven.
10 He used to be a police officer, but now he's a reserve officer
11 in Marion County. We have two kids. We have an
12 eight-year-old girl and a 10-year-old boy. So when I'm not in
13 the courtroom, my little girl, or our little girl, spends her
14 time on a pony running the barrels, and our boy is getting
15 ready to play flag football this year. So that's what keeps
16 me busy out of the courtroom.

17 Now, for those of you lucky enough to be chosen for this
18 panel, Mr. Mueller is going to tell you a little bit more
19 about himself in opening statement.

20 Now, you heard a little bit already about how Mr. Baxter
21 and the Plaintiffs view this case. And as His Honor has told
22 you, this is a case -- it's easy in some respects because you
23 as jurors would be doing one task, and that's setting a FRAND
24 royalty rate for five patents.

25 Your Honor, may I use your document camera?

1 THE COURT: You may.

2 MS. SMITH: Thank you.

3 Now, we see that same language that Mr. Baxter referred
4 you to, and I'm going to -- for those of you that serve on
5 this panel, we are going to wear you out. You are going to
6 hear a lot about FRAND because, again, that's the only issue
7 in the case.

8 So fair -- the F starts us off, and F stands for fair. R
9 is reasonable. We see And, and ND for nondiscriminatory.

10 Now, I'm sure that all of you in your own lives want to
11 be treated fairly. You want to be treated reasonably. No one
12 wants to be treated unreasonably. You don't want to be
13 singled out for what you are or who you are, and you don't
14 want to be discriminated against. And that's exactly what
15 Apple is asking for in this courtroom. We want to be treated
16 fair, reasonably, and we don't want to be discriminated
17 against.

18 Now, you're going to learn that the five patents, and
19 we're talking about five patents in this case, are all subject
20 to an actual requirement. It's a requirement that the owners
21 of the patents allow others, anyone in the world, to use their
22 patents if you pay fair, reasonable, and nondiscriminatory
23 terms.

24 And this is where it gets a little bit interesting and
25 jurors are sometimes surprised. To do your task as a juror in

1 this case, you have to go back to 2012 and at a negotiating
2 table. And I've got a little picture here. See our
3 negotiating table here. And this is a hypothetical
4 negotiation.

5 So it's a negotiation that didn't actually happen, but
6 it's what would have happened between the owners of these
7 patents, the original owners of the patents that aren't in the
8 courtroom today. So it's going to be a negotiation between
9 Apple on one side and Panasonic, Samsung, and LG, the
10 inventors, the original inventors and owners on the other
11 side.

12 So what I'm going to use my precious little time to visit
13 with you about today is your views on how you might approach
14 taking a look at this type of negotiation.

15 Now, I want to start out by talking to you about Apple.
16 Mr. Baxter already asked you, and I saw maybe a showing of
17 hands, who owns an Apple product? All right. Might be easier
18 to say, who does not own -- who has never owned an Apple
19 product? Juror No. 3; 7; 14; Mr. Phelps, who's No. 8; and
20 Juror No. 21. All right.

21 For those of you that have owned Apple products, I'm
22 interested in your experience with the products. Anybody have
23 any unfortunate experience with an Apple product you own, any
24 problems, troubles with it?

25 Juror No. 13. I thought you might say that. Tell me

1 about that, sir, Mr. Gutierrez.

2 THE PANEL MEMBER: My problem is Apple's supposition
3 to right to repair. iPad, my iPhone screen broke. I cannot
4 find parts, and I do not want to pay \$400 for the company to
5 repair it for me when I can just do it easily at home.

6 And once I did get a part, it disabled every display
7 feature in it and it only left me with a blank display. It
8 worked. It just disabled Truetone and other things like the
9 cameras and things like that. And I just believe that it's
10 not right.

11 MS. SMITH: And I'm going to keep you up, please,
12 for a moment. And I appreciate your honesty, and that's
13 exactly what we're looking for in this exercise.

14 Now, as Apple's lawyer, I probably have a reason to be a
15 little bit concerned about you, do I not?

16 THE PANEL MEMBER: You may.

17 MS. SMITH: Okay. All right. Well, given your
18 experience with Apple and your frustrations that you shared
19 with me, I can tell you if you do not serve on this jury,
20 there will be -- judge Gilstrap will give you another
21 opportunity. So do you think you might be a better fit for a
22 different jury that Apple's not involved in?

23 THE PANEL MEMBER: Well, I don't think so because
24 this has really nothing to do with the situation that I had
25 problems with. I just -- I don't know what the situation is

1 yet, so --

2 MS. SMITH: So both sides are starting out equally,
3 sir?

4 THE PANEL MEMBER: Yes.

5 MS. SMITH: Thank you.

6 THE PANEL MEMBER: Any problem I may have with
7 Apple, I still haven't heard anything about the case.

8 MS. SMITH: I appreciate that. Thank you, sir.

9 All right. Any other Apple product owners that have had
10 an issue with an Apple product? All right.

11 Does anybody have a negative view of Apple generally?
12 You know, my kids are always interested in what I'm doing at
13 work, and I tell my little boy that I was going to go work on
14 an Apple case. And he said, gosh, I saw way too many Apple
15 commercials interrupting the Olympics, because we've been
16 watching a lot of Olympics.

17 So for any reason, you know, any reason somebody thinks
18 that maybe Apple isn't starting off on the same place or you
19 have generally a negative view of Apple? Yes. Juror No. 23,
20 Mr. Givens. Tell me about that.

21 THE PANEL MEMBER: Honestly, from a standard of
22 business practice foundation, I mean, I could tell you a story
23 if you'd like. There's really no need in it.

24 MS. SMITH: Okay.

25 THE PANEL MEMBER: But, I mean, I just don't prefer

1 Apple -- I don't prefer Apple products. They are impossible
2 to work on. I use Android, and Android devices are easier to
3 work on, easier to program. I mean --

4 MS. SMITH: I appreciate your honesty. Thank you,
5 sir.

6 All right. A little bit different question. Mr. Baxter
7 put up a slide that told you-all that they're going to be
8 asking Apple to pay, he said, \$506 million, but I believe over
9 a half billion, billion dollars, in this case.

10 Is there anybody sitting there right now that says, you
11 know, Apple can pay, Apple may be able to pay that, it's a big
12 company, so they should pay.

13 Mr. Gutierrez, I see you are shaking your head a little.
14 I've already spoken with you.

15 Is there anyone else that might have that feeling? Thank
16 you.

17 Is there anyone out there that thinks, well, you know,
18 it's not easy, you know, it takes a while to get to the
19 courthouse. You know, this case has made it all the way to
20 the courthouse so the Plaintiffs deserve that kind of money.
21 Anybody have that feeling just by virtue of making it this far
22 to trial?

23 Now, looking back at the screen again, we're going to be
24 talking about this negotiation between Apple and Panasonic and
25 Samsung and LG. And is there anyone who hasn't heard of

1 Panasonic, Samsung, and LG? Those are household names. We've
2 all heard of those. Okay. Shaking your heads.

3 Now, Samsung and LG are Korean companies. Has anybody
4 ever lived in Korea? A show of hands. Okay.

5 And Panasonic is a Japanese company. Has anybody ever
6 lived over in Japan? Okay. I see no hands.

7 Let's talk a little bit about folks that own Samsung, LG,
8 and Panasonic products. A showing of hands if you own
9 products by any of these folks, any of these companies on the
10 right-hand side of the screen?

11 I knew you were going to raise your hand, Mr. Gutierrez.

12 If you would keep your hands up. All right.

13 Let me talk to Juror No. 4. Ms. Hamilton, what do you
14 own?

15 THE PANEL MEMBER: A Samsung TV?

16 MS. SMITH: All right. You've had that for a while,
17 you're happy with it?

18 THE PANEL MEMBER: Yeah.

19 MS. SMITH: Okay. There are some people that, you
20 know, buy a TV, they're are happy with it. And then there are
21 some people that are really, really loyal, brand loyalists,
22 they have eight Samsung TVs in their house or a refrigerator,
23 something like that. Does that describe you?

24 THE PANEL MEMBER: No. We just buy whatever looks
25 appealing at the time or whatever meets our need at the time.

1 MS. SMITH: Okay.

2 THE PANEL MEMBER: It's not one product or another.

3 MS. SMITH: I appreciate that, ma'am. Thank you.

4 Now, anybody else had raised their hand that owns these
5 Panasonic, Samsung, and LG products that is what I call kind
6 of a brand loyalist, it's all you buy, all you've ever bought,
7 and are really loyal to one of these three brands?

8 Juror No. 6, I believe you raised your hand. What kind
9 of products do you own?

10 THE PANEL MEMBER: Television.

11 THE COURT: Okay. Any problem with the fact that
12 you own -- is it Samsung?

13 THE PANEL MEMBER: Yes.

14 MS. SMITH: A Samsung TV, and there is going to be
15 this negotiation between Apple and Samsung, does that start
16 you leaning one way or the other?

17 THE PANEL MEMBER: No, it does not.

18 MS. SMITH: Thank you, ma'am. I appreciate that.

19 All right. Before I go further down the road, I want to
20 talk about the folks seated over here at the table with Mr.
21 Baxter. Mr. Baxter mentioned his wife, and we talked about
22 Judge Parish. Judge Parish is married to Todd Parish. Does
23 anyone know Todd Parish?

24 THE PANEL MEMBER: I sort of resent that.

25 MS. SMITH: Oh, I'm sorry. I'm sorry. Todd Parish

1 is Mr. Baxter's brother-in-law --

2 MR. BAXTER: That's correct.

3 MS. SMITH: -- married to his sister. I didn't mean
4 to insinuate anything. Mr. Baxter is married to Todd's -- to
5 Lauren Parish, and Todd Parish is his sister --
6 brother-in-law.

7 There's a lot of Parishes. I'm struggling here. That's
8 probably a better question because my next question is going
9 to be about Welby Parish. Who knows a Parish beyond Judge
10 Parish in the room?

11 Ms. King, did you teach them all?

12 THE PANEL MEMBER: I did not teach them all. I did
13 know Will Parish, and I do know Todd, and I knew the baby
14 girl, too. However, I didn't even put him with Lauren Parish
15 until he mentioned it himself.

16 MS. SMITH: I think they're newly married, and he's
17 a new resident of Gilmer, I believe.

18 THE PANEL MEMBER: Right. Okay. So, in other
19 words, I didn't even associate him at all with Lauren.

20 MS. SMITH: Ms. King, now that you have associated
21 him with Judge Parish, do I have anything to worry about, that
22 Mr. Baxter is sitting over here on one side and I'm on the
23 other side of the courtroom?

24 THE PANEL MEMBER: God knows that you don't let one
25 person influence your feelings about another person --

1 MS. SMITH: Thank you.

2 THE PANEL MEMBER: -- that I know how to sort and
3 separate. I wouldn't have been successful in a classroom for
4 41 and a half years if I didn't know how to put everything in
5 its own place and its own time and not be prejudiced at any
6 time with anyone, for or against.

7 MS. SMITH: Thank you.

8 THE PANEL MEMBER: My honest opinion is I'm waiting
9 to see the facts, and I don't prejudge anyone or anything.

10 MS. SMITH: Thank you, ma'am. And that's exactly
11 what Apple is asking for in this case. We appreciate it.

12 Reverend Chapman, you said that you knew Judge Parish
13 from church? All right. Anything about that relationship
14 that I should have to worry about?

15 THE PANEL MEMBER: Absolutely not.

16 MS. SMITH: All right. Do you know any of the other
17 Parishes?

18 THE PANEL MEMBER: No.

19 MS. SMITH: They don't show up at church on Sunday?
20 What about --

21 THE COURT: Sit down, Mr. Baxter.

22 MS. SMITH: I actually did mean to insinuate that,
23 Your Honor.

24 All right. Thank you, Reverend. I appreciate it.

25 Other folks that are seated at the table, Ms. Truelove,

1 Ms. Truelove has a husband, Curt Truelove. He practices law
2 in town here. Anyone know the Trueloves?

3 Judge George, casual acquaintance or something I should
4 worry about?

5 THE PANEL MEMBER: Definitely casual acquaintance.

6 MS. SMITH: Okay. But you have something else to
7 tell me about that, Judge?

8 THE PANEL MEMBER: Oh, no.

9 MS. SMITH: All right. Other folks that work with
10 Mr. Baxter, JoAnn Garrett? Judge George, I knew you were
11 going to raise your hand on that one. All right.

12 All right. We see up here my three companies over here,
13 Panasonic, Samsung, and LG, and we see Apple on the other
14 side. Who thinks competition is a good thing generally? We
15 all agree competition is a good thing?

16 No. 7, you are shaking your head yes.

17 All right. So let me choose someone. How about Juror
18 No. 2, Mr. Jirka?

19 THE PANEL MEMBER: Yes.

20 MS. SMITH: All right. I'm going to give you a
21 hypothetical. We've got Ford Motor on one side, we've got
22 Toyota Nissan and Hyundai on the other side. They are
23 negotiating a deal. Do you think those three automakers,
24 Toyota, Nissan, and Hyundai, when they're against Ford, do you
25 think they might be motivated to give Ford a fair and a

1 reasonable deal?

2 THE PANEL MEMBER: Depends on what they're
3 negotiating for and what Ford is willing to give Toyota and
4 the other three as well.

5 MS. SMITH: Okay. What if -- do you think that
6 Nissan and Hyundai and Toyota would want to get the absolute
7 most money out of Ford regardless of the facts because it
8 would further their interests?

9 THE PANEL MEMBER: Yeah, definitely. I mean, that's
10 the job of the negotiator.

11 MS. SMITH: Thank you, sir.

12 All right. Let's take it a step further. Is there
13 anybody that would agree -- and you can sit down, sir.

14 Is there anybody that would agree? And we haven't heard
15 from Juror No. 14, Ms. Berryman. Do you think big companies
16 can do whatever it takes to win a competition even if it means
17 not being fair or being reasonable?

18 THE PANEL MEMBER: No, to be truthful.

19 MS. SMITH: Do you think companies should play by
20 the rules just like individuals do?

21 THE PANEL MEMBER: Yes.

22 MS. SMITH: Okay. Do you also think companies, if
23 they make a deal, kind of like when you make a deal, a deal's
24 a deal and they have to stick to it?

25 THE PANEL MEMBER: Yes, ma'am.

1 MS. SMITH: All right. Thank you, ma'am.

2 Is there anyone that would agree with the statement that
3 it's okay to file a lawsuit to get ahead in competition?
4 Anybody agree with that statement?

5 All right. Did any -- has anybody ever heard of the five
6 companies that are Plaintiffs in this suit, the Optis
7 companies? I don't think they make a product or sell a
8 product, but had anybody heart of the Optis companies before
9 coming into court today? I see a lot of head nods no.

10 Now let's see who I'm going to call on next. How about
11 Juror No. 3, Mr. Anderson? Have you ever bought a car, Mr.
12 Anderson?

13 THE PANEL MEMBER: Ma'am?

14 MS. SMITH: You purchased some cars throughout life
15 I assume?

16 THE PANEL MEMBER: Yes.

17 MS. SMITH: All right. Let's say you're going out
18 and you're going to buy a car. What kind of a car do you want
19 to buy? A truck?

20 THE PANEL MEMBER: A Toyota.

21 MS. SMITH: Okay. I'm with you. You're going to go
22 buy a Toyota, and one of the first things you might do, you
23 know, is look around and see what model you like and
24 comparison shop, maybe online or dealerships. Is that
25 correct?

1 THE PANEL MEMBER: Yes, ma'am.

2 MS. SMITH: Okay. So you've got your eye on a
3 Toyota. And your neighbor buys that same Toyota, and they
4 come to you and say, well, I bought this Toyota at this
5 dealership yesterday for \$35,000.

6 And you said, well, that sounds pretty good. And you go
7 to the dealership the next day and you go to the salesman, and
8 you say, I'll give you \$35,000 for that Toyota. Okay?

9 And he says, well, no, that was yesterday. Today that
10 same Toyota is worth \$50,000.

11 Do you buy that Toyota?

12 THE PANEL MEMBER: No. I'm cheap. I go for the
13 used.

14 MS. SMITH: Okay. Just keep with me, though. Keep
15 with me. Okay?

16 So you go to lunch, you go to lunch, and you shake your
17 head, and you say, well, you know, maybe I heard that wrong.
18 Maybe I heard that wrong. So you give them the benefit of the
19 doubt. You seem like a reasonable guy. You give them the
20 benefit of the doubt. You go back after lunch, and you say,
21 well, let's talk about that Toyota again.

22 And he says, well, it's a hundred thousand.

23 THE PANEL MEMBER: That would be my luck.

24 MS. SMITH: Well, we're not going to talk about luck
25 in this lawsuit, but we are going to talk about negotiations

1 and what's reasonable. Do you think that's a reasonable way
2 to negotiate?

3 THE PANEL MEMBER: No, ma'am.

4 MS. SMITH: Okay. Do you think if that salesman, in
5 between the time he first met you and the next day when you
6 came back, if he saw that you lived in a big house and you had
7 lots of money, do you think if he took that into account and
8 raised that price, that would be fair?

9 THE PANEL MEMBER: No.

10 MS. SMITH: All right. Thank you, sir.

11 I assume I have agreement if I asked you-all the same
12 question by raising your hands, that wouldn't be a fair way to
13 negotiate, would it? That's not the negotiation we're all
14 used to where the price just escalates and keeps going up. Is
15 that right? All right.

16 Now, one of the ways I get to know you guys in these
17 exercises is kind of listening to how you would -- how would
18 you describe yourselves. So the first group of people I want
19 to hear from with the raise of hands are those that would
20 describe themselves as the type that make quick decisions.

21 Do I have any quick decision makers on the panel? Not a
22 single person?

23 Okay. Ms. Ross, how would you categorize yourself?
24 Would you categorize yourself as a quick decision maker or
25 someone that takes time and gives thoughtful consideration to

1 every decision?

2 THE PANEL MEMBER: I take a little time before I do
3 anything.

4 MS. SMITH: Okay. And here's where I'm going with
5 this, because in this case, as you've already seen, the
6 Plaintiff is going to stand up and they get to go first, and
7 then Apple is always going to go second. So you're going to
8 hear from Mr. Baxter, and it may be a day or two before you
9 hear from Apple.

10 And so what's important for me to know is that
11 everybody's going to wait until you hear the whole story
12 before you make up your mind. I see some head nods.

13 By a showing of hands, can I have an agreement that
14 everyone will wait?

15 I know, Ms. King, you will certainly because you told us
16 that earlier.

17 Showing of hands? Juror No. 7, I see your head shaking.

18 All right. A little bit different question. Some folks
19 tend to make up their mind on their own. They don't want any
20 outside influence. They don't want anybody whispering in
21 their ear. Other folks, they tend to rely upon others for
22 advice at times, whether it be experts or manuals or YouTube
23 videos.

24 Who are the folks that are kind of my lone wolfs that
25 like to make up their mind on their own without any outside

1 intervention and input? Raise your hand.

2 Ms. King. Judge George. Juror No. 7, I haven't spoken
3 to you. Mr. Woods, why do you put yourself in that category.

4 THE COURT: Mr. Woods, wait until you get the
5 microphone, sir.

6 THE PANEL MEMBER: Sorry.

7 THE COURT: Thank you.

8 THE PANEL MEMBER: I would like to hear all the
9 facts to make sure that I understand exactly what's going on.

10 MS. SMITH: Okay. And more often than not, after
11 you hear all the facts, you don't need anyone to help you make
12 a decision, you are confident making it on your own?

13 THE PANEL MEMBER: Correct.

14 MS. SMITH: Okay. And not often after you make a
15 decision, do you get a little bit stubborn about that decision
16 and you don't want to change your mind?

17 THE PANEL MEMBER: Usually if I make a decision, I
18 usually stick with it.

19 MS. SMITH: Okay. Thank you, sir.

20 THE COURT: You have five minutes remaining,
21 counsel.

22 MS. SMITH: Thank you, Your Honor.

23 Now, I think for those of you that end up serving, you're
24 going to hear that this case is not about punishment. There
25 is no amount of money that anyone's going to ask for to punish

1 Apple or anyone else in the case.

2 But at times, you know, some folks get kind of emotional
3 about these cases, and they say, well, even if Judge Gilstrap
4 gives me that instruction, you know, I heard some testimony
5 from a witness and it made me mad, or that lawyer is really
6 aggravating me, and it's really more important for juries to
7 do justice rather than follow the law or the Judge's
8 instructions.

9 Does anyone believe that, have that belief in your heart
10 of hearts, that at times it's just more important for juries
11 to do justice than follow the law? All right.

12 Mr. Baxter asked you some questions about the
13 half-billion dollar number he put up on the screen. Here's a
14 different question. Does anyone think -- we all read about
15 cases in the newspaper. Does anyone think in the last few
16 years, you know, the money damages in lawsuits are too low?
17 You see a case and you think, I would have given more money
18 than that had I been on that jury.

19 Anyone have that thought?

20 Had anybody heard anything about this case prior to
21 coming to the courthouse today? Anybody read anything online,
22 in the paper, anything like that?

23 Had anybody read anything about patent cases in East
24 Texas before coming to the courthouse today? Anybody read
25 anything about patent cases in East Texas? First time

1 anyone's heard about them?

2 Now, I'm going to end with probably the similar question
3 that Mr. Baxter ended with. As lawyers, you know, we
4 can't -- you're sitting out there, and we're trying to get to
5 know you, and we can't know all the right questions to ask. I
6 certainly don't know all the right questions to ask.

7 So is there somebody sitting there thinking, gosh, if Ms.
8 Smith would have just asked me this question, I would have
9 told her that I wouldn't be the best juror for this case?
10 Anyone have that thought? All right.

11 Well, I will end where I started, and that's by thanking
12 you, thanking you for showing up, and thanks to you that are
13 lucky enough to be chosen to serve.

14 Thank you, Your Honor.

15 THE COURT: Counsel, approach the bench, please.

16 (The following was had at the bench.)

17 THE COURT: Mr. Baxter, does the Plaintiff have any
18 challenges for cause?

19 MR. BAXTER: No, Your Honor.

20 THE COURT: Ms. Smith, does the Defendant have
21 challenges for cause?

22 MS. SMITH: No. 13 and 23.

23 THE COURT: All right. No. 4 and No. 7 and No. 14
24 have all indicated they may have a scheduling problem. No.
25 13's been challenged for cause. The next venire member who's

1 had anything raised regarding them is 23, Mr. Givens. We're
2 going to seat eight jurors, and each side's going to get four
3 strikes. That's a total of 16.

4 If, hypothetically, I were to release the three that have
5 indicated a scheduling problem, 4, 7, and 14, and if I were to
6 grant the challenge for cause on 13, hypothetically, that
7 still gives us more than enough jurors to seat a jury before
8 getting to 23. Do you-all agree with that?

9 MR. BAXTER: Yes, Your Honor.

10 MS. SMITH: Yes.

11 THE COURT: So I'm going to recess the jury panel
12 and hold back 4, 7, 13, and 14. And even though Ms. Smith's
13 challenged 23 for cause and No. 24 has indicated a scheduling
14 issue, I see no reason to bring them to the bench if we can
15 seat a jury without having to get that far. Does everybody
16 agree?

17 MS. SMITH: Agree.

18 MR. BAXTER: Yes, Your Honor.

19 THE COURT: All right. If you will take your places
20 at counsel table, I will bring you back up after I recess the
21 jury.

22 (The following was had in the presence and hearing
23 of the jury panel.)

24 THE COURT: Ladies and gentlemen, I'm about to
25 excuse those of you on the venire panel for a recess. And in

1 just a minute when you recess, ladies and gentlemen, if you'll
2 exit through the double doors in the back of the courtroom.
3 As you go out those double doors, if you take a left and go
4 around the corner, you'll find two important things--the water
5 fountain and the bathrooms. Feel free to take advantage of
6 either or both during this recess.

7 Also, I'm going to ask you to stay in the building, don't
8 go outside, but you'll be outside of the courtroom during this
9 recess.

10 Also, ladies and gentlemen, don't hesitate to be friendly
11 or have a conversation with anybody else that you'd like to on
12 the venire panel.

13 I often get lawyers who ask the question, is there
14 anybody on the panel that knows anybody else on the panel.
15 Maybe some of you know one or two other members that are here
16 today. If you'd like to speak and have a conversation, that's
17 fine, but don't discuss anything that's happened in the
18 courtroom this morning. Don't discuss anything you've heard
19 in the courtroom this morning.

20 And let me remind you of this. You have heard absolutely
21 no evidence in this case; none whatsoever. So talk about the
22 August weather in Texas, talk about how many Parishes you can
23 count, talk about the Big 12 and what a fiasco that is going
24 to be for football in Texas, talk about whatever you want to
25 talk about, but don't talk about anything that's happened in

1 the courtroom this morning or that you've heard since you've
2 been in the courtroom this morning.

3 Also, there are just a couple of you that I'm going to
4 ask to stay behind and not leave the courtroom during this
5 recess so that I can have an opportunity to talk to you
6 privately here at the bench. And those are No. 4, Ms.
7 Hamilton; No. 7, Mr. Woods; No. 13, Mr. Gutierrez; and No. 14,
8 Ms. Berryman. If you four will simply let those around you
9 slip by you when they recess and stay in your seats, I'll
10 visit with you one at a time here at the bench.

11 All right, ladies and gentlemen. Those of you on the
12 panel except those four that identified are excused for recess
13 at this time.

14 (Whereupon, the jury panel left the courtroom.)

15 THE COURT: Please be seated.

16 Counsel, approach the bench, please.

17 (The following was had at the bench.)

18 THE COURT: Ms. Hamilton, will you come up here and
19 join us, please?

20 Good morning.

21 THE PANEL MEMBER: Good morning.

22 THE COURT: This is our microphone. We are going to
23 talk quietly here at the bench. The lawyers are going to
24 listen in.

25 When we began this morning, I indicated that this trial

1 is probably going to go through Friday or maybe even Monday of
2 next week, and I asked if there was anybody that had a serious
3 hardship about being able to be present during that time if
4 they were selected. And you raised your hand. So tell me
5 about that, please.

6 THE PANEL MEMBER: My husband is sick. He is
7 scheduled for surgery tomorrow, but now they realized that
8 there may be some complications with his medication. So
9 they're talking like it may be moved to next week, but at this
10 point we don't know.

11 THE COURT: Okay. And I don't want to pry into his
12 or her -- your personal affairs, but is this day surgery where
13 you come in and leave the same day? Do they put you in the
14 hospital and keep you?

15 THE PANEL MEMBER: No, he has to stay overnight.

16 THE COURT: Where is this scheduled to happen?

17 THE PANEL MEMBER: Texarkana at St. Michael's.

18 THE COURT: All right. Mr. Baxter, any questions
19 you have of Ms. Hamilton?

20 MR. BAXTER: No, Judge.

21 THE COURT: Ms. Smith?

22 MS. SMITH: No, Your Honor.

23 THE COURT: All right. Ms. Hamilton, I'm going to
24 let you join the rest of the panel outside. Just don't
25 discuss anything we talked about in here.

1 THE PANEL MEMBER: All right. Thank you.

2 THE COURT: Thank you, ma'am.

3 (The panel member left the courtroom.)

4 THE COURT: I'm going to excuse Ms. Hamilton.

5 Mr. Woods, would you come join us, sir?

6 Good morning, Mr. Woods.

7 THE PANEL MEMBER: Good morning, sir.

8 THE COURT: This is our microphone. We are just
9 going to talk quietly here.

10 This morning when we started, you indicated that you
11 might have a scheduling problem about being here through the
12 trial if you were selected. You raised your hand when I asked
13 if anybody had a reason why they might not be able to be here
14 through Friday or even Monday of next week?

15 THE PANEL MEMBER: Yes, sir.

16 THE COURT: Tell me what that is please.

17 THE PANEL MEMBER: My daughter flew in from Maryland
18 yesterday. Her brother is on life support, and so we -- this
19 morning when she called, they said they didn't know how long
20 he was going to make it.

21 THE COURT: Now, it's her brother, is that --

22 THE PANEL MEMBER: It's her half brother.

23 THE COURT: And how is the person on life support
24 related to you?

25 THE PANEL MEMBER: He's not related to me. He's

1 just related to my daughter.

2 THE COURT: Okay. It's your daughter's half
3 sibling?

4 THE PANEL MEMBER: Half brother, yes, sir.

5 THE COURT: But you are not his father?

6 THE PANEL MEMBER: No, sir.

7 THE COURT: Okay. And where is he in the hospital?

8 THE PANEL MEMBER: In Paris -- in Plano, Texas --

9 THE COURT: Okay.

10 THE PANEL MEMBER: -- which is not a big problem if
11 he passes, you know, I would hate to not be there for her.

12 THE COURT: Okay. So he's --

13 THE PANEL MEMBER: Having heart failure.

14 THE COURT: All right, sir. I know all things being
15 considered, you'd like to be there with your daughter.

16 THE PANEL MEMBER: Yes, sir.

17 THE COURT: But given that this gentleman is no
18 relation to you --

19 THE PANEL MEMBER: Right.

20 THE COURT: -- is it something you feel like you
21 really have to do, or are you going to -- is your daughter
22 going to be very, very upset with you if you're not there to
23 hold her hand while she sits there in the hospital? Tell me
24 the situation.

25 THE PANEL MEMBER: No. I'm just talking about if he

1 died -- she's at the hospital with him. She's spending the
2 night with him. It's not -- I am saying if he should pass.

3 THE COURT: Now, is he from the Plano area or if he
4 should pass away --

5 THE PANEL MEMBER: He's from Paris.

6 THE COURT: Paris, Texas?

7 THE PANEL MEMBER: Yes.

8 THE COURT: And if there were a funeral or
9 something, that's where it would be?

10 THE PANEL MEMBER: It would be in Paris.

11 THE COURT: Okay. And what's the most current
12 information you've been told about whether he's going to be
13 here days or weeks or how long is it going to be?

14 THE PANEL MEMBER: Well, she said the cardiologist
15 said they just don't know because his heart is only pumping
16 about six percent.

17 THE COURT: Okay. All right. Is there anything
18 else about you being available to serve on this jury if you
19 were selected that we haven't talked about?

20 THE PANEL MEMBER: No, sir.

21 THE COURT: Okay. All right. Mr. Woods, I'm going
22 to ask you to join the rest of the panel outside --

23 THE PANEL MEMBER: Okay.

24 THE COURT: -- for recess. Just don't discuss
25 anything we talked about in here.

1 THE PANEL MEMBER: Okay.

2 THE COURT: Thank you.

3 (The panel member left the courtroom.)

4 THE COURT: Mr. Baxter, Ms. Smith, clearly Mr.
5 Woods, at least as I understand it, doesn't really have a
6 problem with serving; he's just concerned about the
7 possibility that his daughter's half sibling would pass away
8 and he would need to be included at a funeral somewhere.

9 And there is no way to know whether this individual is
10 going to be living days, weeks, or months from now, or if
11 he'll die in the next 30 minutes.

12 I'd hate to take him on this jury and then the death
13 occurs and he feels compelled to attend a service with his
14 daughter. But as sure as I don't take him, the gentleman in
15 the hospital will be here two weeks from now or longer. I
16 would welcome any input from either party.

17 MR. BAXTER: I don't want to be hardhearted about
18 it, Judge, but we'd like to him.

19 THE COURT: Ms. Smith, what's the Defendant's view
20 on this?

21 MS. SMITH: You know, I'm kind of soft, Your Honor.
22 If I were in his shoes, I would want to be able to attend a
23 funeral, and he sounded very convincing that that might be a
24 reality this week.

25 THE COURT: Well, it's an unknown, and that's the

1 problem.

2 MS. SMITH: Yes, Your Honor. I'll tell you, I'd
3 like to proceed with eight jurors. If we got the situation
4 where he asked to be excused, I would like to proceed with
5 eight.

6 THE COURT: I don't want to go into this trial
7 thinking we are not going to be keeping eight jurors. I could
8 seat up to 12. I am going to seat eight. There are always
9 things that can come up that you have no prior expectation at
10 all that might make you have to release somebody.

11 I'm going to excuse Mr. Woods.

12 MS. SMITH: Thank you.

13 THE COURT: Mr. Gutierrez, would you join us,
14 please, sir?

15 Good morning.

16 THE PANEL MEMBER: Good morning.

17 THE COURT: This is our microphone. We're just
18 going to talk quietly here.

19 THE PANEL MEMBER: Yes, sir.

20 THE COURT: Mr. Gutierrez, during the questioning
21 this morning, you talked a good bit about Apple, that you
22 didn't like their absence of repair parts and the cost of the
23 parts. You said it's difficult to fight a trillion-dollar
24 company like Apple. Although when you were asked if you could
25 be fair, you said you hadn't heard any evidence and you'd wait

1 to hear the evidence.

2 I guess my question is, you obviously have some prior
3 experience with the Defendant, it's not positive. Can you
4 assure me that if you're on this jury, you will completely and
5 totally set that aside and only let the evidence that's
6 produced in this case weigh on your mind as to what a result
7 should be, or is there any chance in your mind you're going to
8 be influenced by those prior experiences despite your best
9 efforts and not be able to completely set that aside?

10 That's what I need to know.

11 THE PANEL MEMBER: I can be impartial. Like I said,
12 as I mentioned before, I haven't heard anything about this
13 case. Regardless of whatever problems I may have with the
14 right to repair things, that really -- this has nothing to do
15 with that. So unless I really know what the evidence on both
16 sides, I can't say one place is --

17 THE COURT: All right. And I'll be candid with you,
18 sir. Your comment during the questioning this morning that
19 it's difficult to fight a trillion-dollar company really is a
20 little more concerning to me than the comment about parts and
21 repairs.

22 Is it your view that Apple is so big and so wealthy and
23 so powerful that they have an outsized or an unfair advantage
24 here, and are you going to go into this case if you're on the
25 jury thinking that? Or is that something that you can tell me

1 will not influence your participation in this trial if you're
2 on the jury?

3 THE PANEL MEMBER: Well, I don't think it's
4 impossible, but I certainly do think it's difficult. But I
5 don't --

6 THE COURT: You think what's difficult?

7 THE PANEL MEMBER: Just battling a company with so
8 much money.

9 THE COURT: Okay. All right.

10 Ms. Smith, do you have questions for Mr. Gutierrez?

11 MS. SMITH: Mr. Gutierrez, you said on your
12 questionnaire that you were against Apple. Is that correct?

13 THE PANEL MEMBER: Against Apple because of the
14 right to repair, not specifically. I actually do like the
15 products. It's just the fact that you can't repair them.

16 MS. SMITH: Okay. And that's not an isolated
17 incident you had with a single product. That's a long-held
18 belief and experience across many Apple products. Correct?

19 THE PANEL MEMBER: I have had a Mac book. I have
20 had a couple of iPhones.

21 MS. SMITH: Okay. And regardless of the facts of
22 this case, the Judge can instruct you to forget about that
23 bias you have, you'll still have a bias against Apple. Is
24 that separate and apart from the facts of this case?

25 THE PANEL MEMBER: Well, I mean, like I said, it's

1 not related to the case here, but I still would have my
2 opinion of the right to repair.

3 MS. SMITH: Absolutely. So unrelated to the facts
4 in this case, you have that bias generally against Apple.

5 THE PANEL MEMBER: I suppose so, yeah.

6 MS. SMITH: Okay. And you said, while it wouldn't
7 be impossible to be up against a company like Apple, you said
8 it would be difficult, which means that certainly the scales
9 aren't starting out exactly even, are they?

10 THE PANEL MEMBER: Well, like I said, no evidence
11 has been given and in my opinion, my judgment, I haven't seen
12 anything really to say either side is right or wrong.

13 MS. SMITH: And you made the comment in open court
14 that Apple is a trillion-dollar company. That's something
15 that you would feel free to share if you were on a jury and
16 you were deliberating about monetary damages with Apple. Is
17 that correct, even if it wasn't evidence in the case?

18 THE PANEL MEMBER: Sorry?

19 MS. SMITH: You followed the net worth of Apple
20 being a trillion-dollar company, you said?

21 THE PANEL MEMBER: Uh-huh.

22 MS. SMITH: And that's something that you take back
23 in your deliberations when discussing damages in an Apple
24 case. You'd have that knowledge and you'd share that
25 knowledge with others even if it wasn't evidence in this case?

1 THE PANEL MEMBER: I'm not understanding. The
2 company does have a lot of money, but regardless, I mean, the
3 damages haven't been -- I'm really not understanding what
4 the --

5 MS. SMITH: Okay. Okay. Thank you, sir.

6 THE COURT: Mr. Baxter, do you have any questions.

7 MR. BAXTER: I think you told the judge that you
8 don't know any facts in this case, but the scales start out
9 exactly equal.

10 THE COURT: You're going to have to say yes or no,
11 Mr. Gutierrez.

12 THE PANEL MEMBER: Yes, sir.

13 MR. BAXTER: We're not ahead, Apple's not behind?

14 THE PANEL MEMBER: Not in my opinion.

15 MR. BAXTER: You could listen to the evidence and
16 make up your mind and maybe you rule for Plaintiff, maybe you
17 rule for Apple, but that's to be determined. Is that right?

18 THE PANEL MEMBER: Yes, sir.

19 THE COURT: Mr. Gutierrez, let me just ask it one
20 more time. Can you treat both of these companies fairly and
21 impartially and go into this with them in the same position
22 and let only the evidence in the case determine which one you
23 decide for later on?

24 THE PANEL MEMBER: Yes, sir.

25 THE COURT: Okay. I'm going to let you join the

1 rest of the panel outside. Just don't discuss anything we
2 talked about in here.

3 THE PANEL MEMBER: Yes, sir.

4 THE COURT: Thank you.

5 (The panel member left the courtroom.)

6 THE COURT: I'm going to deny the Defendant's
7 challenge for cause as to Mr. Gutierrez.

8 MS. SMITH: Thank you, Your Honor.

9 THE COURT: Ms. Berryman, would you come up, please?
10 Good morning, Ms. Berryman.

11 THE PANEL MEMBER: Good morning.

12 THE COURT: If you'll come up and take your mask
13 down. This is our microphone. We're going to talk quietly
14 here.

15 When we started this morning, I indicated I thought the
16 trial would go through this Friday and maybe go into Monday of
17 next week. And I asked if there were any reasons why, if
18 somebody on the panel couldn't be here that entire time, to
19 let me know and you raised your hand. Tell me what was on
20 your mind what you were thinking about that.

21 THE PANEL MEMBER: Oh, I have a daughter that has
22 lupus, and she has a doctor's appointment Thursday morning at
23 9:30.

24 THE COURT: Okay.

25 THE PANEL MEMBER: And she can't drive. I'm her

1 only transportation.

2 THE COURT: All right. Now, I don't want to pry
3 into your daughter's medical condition, but is this a routine
4 appointment that could be rescheduled?

5 THE PANEL MEMBER: This is a rescheduled one,
6 because my son was supposed to have took her on her
7 appointment last month and he ended up being called -- it was
8 his off day. He ended up being called for work, and --

9 THE COURT: He wasn't able to take her?

10 THE PANEL MEMBER: Yeah. So we rescheduled
11 for -- she rescheduled it for Thursday, and I took off work so
12 I can take her.

13 THE COURT: I understand.

14 THE PANEL MEMBER: Because she's in like kidney
15 failure and heart failure.

16 THE COURT: Okay. That's what I'm trying to
17 determine. Is this just a simple follow-up appointment where
18 a doctor's going to look at her for 10 or 15 minutes and send
19 her home?

20 THE PANEL MEMBER: Oh, yeah.

21 THE COURT: Or does she have a serious problem that
22 she may be going into the hospital?

23 THE PANEL MEMBER: She's not going into the
24 hospital, but she can't afford to be missing appointments
25 because when the pandemic was going on, we missed her doctor's

1 appointment and you had to make another appointment like three
2 months later. And then my daughter ended up in the hospital
3 with kidney and heart failure. I don't want to miss another
4 appointment. That was scary.

5 THE COURT: All right. Where is her doctor's
6 appointment?

7 THE PANEL MEMBER: It's in Longview.

8 THE COURT: Okay.

9 THE PANEL MEMBER: She goes to Longview and she goes
10 to Dallas.

11 THE COURT: And is there anybody else that you know
12 of that could take her if you were on this jury?

13 THE PANEL MEMBER: No, because my daughter -- she
14 just started working at Christians Gift Shop. So just my son,
15 me, my daughter.

16 THE COURT: And your son couldn't take her?

17 THE PANEL MEMBER: No. He's working.

18 THE COURT: Okay. Is there anything else about this
19 situation that you haven't told me I need to know about?

20 THE PANEL MEMBER: That's it.

21 THE COURT: Okay.

22 THE PANEL MEMBER: Just my daughter, got to go to
23 the doctor, and I don't want her being upset because she
24 already missed one appointment and she knows this is her life,
25 so she was super close to being on dialysis, so we can't

1 afford, you know --

2 THE COURT: Ms. Berryman, I'm going to let you join
3 the rest of the panel for recess outside the courtroom. Just
4 don't discuss anything we talked about in here.

5 Thank you, ma'am.

6 THE PANEL MEMBER: Thank you.

7 (The panel member left the courtroom.)

8 THE COURT: I'm going to excuse Ms. Berryman.

9 All right. I've excused Ms. Hamilton, Mr. Woods, and Ms.
10 Berryman, but not Mr. Gutierrez. That means three have been
11 excused. That means you strike through 19. Does everybody
12 agree with that? Anybody disagree?

13 It's 11:30. I'll give you until a quarter until 12:00 to
14 turn in your strike list to the courtroom deputy. All right?

15 MR. BAXTER: Through 19, Judge.

16 THE COURT: That's my calculation. Ms. Truelove is
17 nodding her head up and down.

18 All right. Well, while counsel exercise their peremptory
19 challenges, the Court will stand in recess.

20 (Brief recess.)

21 THE COURT: Be seated, please.

22 Ladies and gentlemen, if you will listen when your name
23 is called and come forward and take your place in the jury
24 box, we're going to seat eight jurors total. I'd like the
25 first four to position yourselves on the front row of the jury

1 box and the second four, 5, 6, 7, and 8, to position
2 yourselves on the second row of the jury box.

3 Whoever is called as Juror No. 1, when you go to the
4 front row of the jury box, if you will go all the way to the
5 end and stand in front of the last chair. Juror No. 2, you go
6 to the front row of the jury box, go to the third chair from
7 the end and stand in front of the third chair. Leave an empty
8 chair between Juror 1 and Juror 2. The rest of the jurors do
9 the same thing--leave an empty chair between you and the next
10 person in the jury box.

11 And then when Juror No. 5 goes in, the first person on
12 the second row, stand behind the first person on the first
13 row, and everybody will follow suit, and we'll end up with
14 four on the front row, four on the back row, and an empty seat
15 between everybody. And that will be your assigned seat, for
16 lack of a better word, throughout the rest of the trial.

17 With that, I'm going to ask our Courtroom Deputy,
18 Ms. Brunson, to call the names of the eight of you that
19 have been selected as jurors in this case.

20 THE CLERK: Vicki Ross, Steffani Chapman, Judy
21 Hilton, Gloria King, Steredrick Goodjoint, Nancy George, Tonya
22 Jordan, Andreas Floyd.

23 THE COURT: Please be seated.

24 Those of you that were not selected to serve on this
25 jury, I am about to excuse you at this time, but I want to

1 excuse you with the sincere thanks and gratitude of the Court
2 for being here.

3 Every one of you who appeared this morning for jury duty,
4 even though you weren't selected, you have performed a very
5 real and important and valuable public service by being here.
6 Every one of you who showed up this morning had other places
7 to be, other things to do that were important in your lives.
8 You set those aside and you made a very real and tangible
9 sacrifice as good citizens to appear and present yourselves
10 for jury duty in this case.

11 And even though you weren't selected, you've been an
12 integral part of the process, essential to the Court
13 discharging its obligation under the Constitution. And I
14 cannot thank you enough for having made that sacrifice and
15 having been here and presented yourself as you did this
16 morning.

17 And even though you weren't selected, that in no way
18 takes away from what you've done, the importance of it, the
19 value of it, and the significance of it, and the Court thanks
20 you. I speak for myself, I speak for these parties, I speak
21 for the lawyers, everyone on this side of the bar appreciates
22 and values what you've done by being here this morning.

23 As you leave the courtroom, if you'll exit through the
24 double doors and go to the right, you'll pass by the Clerk's
25 Office. Ms. Clendening and her staff will be there. She's

1 going to want to recover these laminated numbers that you-all
2 have clipped to your clothing. She will be available to
3 answer any questions you have about having been here this
4 morning.

5 If you need any documentation for an employer verifying
6 where you've been and why you didn't show up for work this
7 morning, she'll help you with that. She'll address any
8 questions or concerns that you have.

9 Again, ladies and gentlemen, thank you so very much for
10 what you've done. It's been very important and very
11 significant, and the Court thanks you again.

12 With that, those not selected to serve on this jury are
13 excused.

14 (Whereupon, the jury panel left the courtroom.)

15 THE COURT: Everyone except the members of the jury,
16 please be seated.

17 Members of the jury, I'm going to ask Ms. Brunson, our
18 Courtroom Deputy, to administer the oath to you at this time.
19 If you'll raise your right hands.

20 (Whereupon, the oath was administered by the Clerk.)

21 THE COURT: Please be seated.

22 Ladies and gentlemen, I told you this morning that as a
23 part of this process, lunch would be provided to you each day,
24 and I'm about to excuse you for lunch, which will be available
25 to you in the jury room. But before I do, I have a couple of

1 important instructions I need to give you.

2 Do not discuss this case with anyone. And when I say do
3 not discuss the case, I mean do not communicate about it in
4 any way with anyone. One of the foundational principles of
5 the jury trial system is that the jury must have before it,
6 when it makes its decision and answers the questions that will
7 be put forth in the verdict form that you will receive and
8 consider after you have heard all the evidence, the sole
9 universe of the evidence and information that you have before
10 you when you answer those questions must be limited to the
11 evidence that comes in during this trial and the testimony
12 from the witnesses under oath and subject to
13 cross-examination, as well as any documents and exhibits that
14 the Court has admitted into evidence.

15 The evidence--the testimony of the witnesses, the
16 exhibits that the Court has admitted--that must constitute the
17 entirety of the material and the information that you draw
18 upon to answer the questions you're going to be asked at the
19 end of this trial.

20 You must not have any outside influences. You must not
21 have any information of any kind from any source that comes
22 from anywhere other than the witnesses in this trial and the
23 exhibits that I have admitted into evidence.

24 Therefore, it is absolutely essential that you not
25 discuss or communicate about this case with anyone, because if

1 you do, you will be receiving information that did not come in
2 during the trial and it will call into question the entirety
3 of this process and could potentially require us to start over
4 with a new jury, and all the time and all the money and all
5 the resources and all the effort that has gone into this so
6 far could be in jeopardy. So it is a very, very important
7 instruction that I give you when I say do not communicate
8 about this case with anyone in any way.

9 And, ladies and gentlemen, when I say that, that includes
10 the eight of you. You are not to discuss this case among
11 yourselves in any way until you've heard all the evidence,
12 until I've given you my final instructions on the law that you
13 are to apply, and until counsel for the parties have presented
14 their closing arguments.

15 When that has happened, at that point I will instruct you
16 to retire to the jury room and to deliberate on your verdict.
17 At that point, ladies and gentlemen, it's like somebody has
18 flicked a light switch. At that point you go from not being
19 able to discuss the case among yourselves to being required to
20 discuss the case among yourselves during your deliberations in
21 an effort to reach a unanimous decision about the questions
22 you're going to be asked to answer in the verdict form.

23 So until that point, until you've heard all the evidence,
24 you've heard my final charge on the law, and counsel have
25 presented their closing arguments and I have sent you to the

1 jury room to deliberate on the verdict, until that time, you
2 must not discuss or communicate about the case among
3 yourselves, as well as anybody else.

4 And when I say don't communicate about the case, that's
5 not just limited to oral conversation. That's communication
6 of any type--oral, written, electronic, digital. Those of you
7 on the jury that are active users of social media, don't post
8 anything on Facebook, don't tweet on Twitter, don't use
9 Instagram, don't use any social media platform to communicate
10 about this case in any way.

11 Don't do any research. Don't go online at night and do a
12 search about any of the issues in this case, the lawyers in
13 this case, the parties in this case, the witnesses in this
14 case. Don't do any outside research of any kind, whether it's
15 an online computer search or an encyclopedia pulled off a
16 shelf doing it the old-school way. Don't do any research of
17 any kind.

18 And let me just say this. Unless you live alone, when
19 you get home tonight, wherever that is, the first thing you
20 are going to hear when you walk through the door is, Tell me
21 what happened in federal court in Marshall today. Don't even
22 try to answer that question, because if you even try to answer
23 that question, you're going to violate this very important
24 instruction that I'm giving you.

25 When you get that question, just simply smile and say,

1 That very stern federal judge told me not to talk about this
2 case with anyone, and I'm going to do that. When the case is
3 over and when I've been released as a juror, then I'll be able
4 to talk with you about it. But until then, I am not going to
5 discuss this case with you or anybody else.

6 So blame it on me, ladies and gentlemen, but don't even
7 try to answer that question which, as I say, unless you live
8 alone and unless your canary can't talk, you are going to get
9 that question when you come through the door this evening.

10 Also, I don't think it's likely to happen, but I can't
11 tell you that this is beyond the realm of possibility, and
12 that is, it is possible that some outside third party might
13 try to contact you during this trial and communicate with you
14 and influence any decision that you ultimately are going to
15 make. I don't think that's likely, but there are no
16 unimportant cases that get to a jury trial in federal court.
17 And this is an important case, and it is possible that some
18 outside party may try to improperly communicate with you or
19 influence you in some way.

20 If there is any kind of an overture made to you by anyone
21 that you feel is improper or out of order in any way, then you
22 should notify Ms. Clendening, she will let the Court know, and
23 the Court will deal with it. Again, I don't think it's
24 likely, but I need you to know that it's not outside the realm
25 of possibility.

1 Also, ladies and gentlemen, over the course of this
2 trial, as you come in the mornings and leave in the evenings,
3 it's going to be inevitable that you are going to pass by
4 certain members of these two trial teams. You're going to
5 walk by witnesses on the sidewalk. You're going to walk by
6 lawyers in the hallways. You're going to be in close contact
7 with the people involved in the trial of this case. And I
8 want you to understand when that happens, they're not going to
9 speak to you. They're not going to say, Good morning, how are
10 you today. They're not going to be friendly and outgoing like
11 we all generally are in East Texas.

12 That's because I've instructed them not to be that way,
13 that's because I've instructed them not to speak to you or
14 communicate with you, and that's because the sole source of
15 the information you must have before you when this trial is at
16 an end and you are deliberating on your verdict must be only
17 the testimony given under oath and subject to
18 cross-examination from the witness stand and the exhibits that
19 the Court has admitted into evidence and have been presented
20 to you by the parties during the trial. That must be all and
21 only the information that you have before you.

22 So when that happens, don't hold it against anybody,
23 either the Plaintiff's side, the Defendant's side, or anyone
24 else, when they're not friendly, when they're not gregarious
25 and engaging, when they don't speak to you and say, Good

1 morning, how are you today. They're simply doing what the
2 Court has instructed them to do, and you need to keep that in
3 mind.

4 During the course of the trial -- we live in interesting
5 times, ladies and gentlemen. During the course of the trial
6 if you have any physical problems, if any member of your
7 family has symptoms that indicate any possible exposure to
8 this pandemic, you need to let Ms. Clendening know and she'll
9 advise me and we will take it up and deal with it then.

10 I hope that's not going to happen, I think it's unlikely,
11 but you need to let us know if you or any family member you're
12 responsible for has a problem related to this current public
13 health emergency that we're dealing with.

14 Also, while you're on your lunch recess, which is going
15 to start in just a few seconds, please make an opportunity to
16 let Ms. Clendening's office have a good working cell phone
17 number for you. It is possible that we might need to get in
18 touch with you over an evening or during a time when you're
19 not already here at the courthouse, and we would need a good
20 working cell phone number for each of you. So simply try to
21 make that available to Ms. Clendening while you're at lunch
22 today.

23 And when we speak about cell phones, I'm going to ask
24 each of you, if you have a cell phone, a tablet, a smart
25 device of any kind, leave it in the jury room for the rest of

1 today. And when you come back tomorrow, leave it in your car
2 or leave it at home. Those kind of smart devices, as you well
3 know, do a lot more than tell time. They do a lot more than
4 make a phone call. They are basically mini computers, and the
5 temptation to search outside sources or information regarding
6 the case or the lawyers or the parties is just too tempting to
7 have those devices right there at the tip of your fingers.

8 So I'm going to ask you, starting tomorrow, not to bring
9 your smartphones or tablets or smart devices of any kind to
10 the courthouse. If you're expecting an important email
11 regarding to your work or your business, there will be breaks
12 where you can go to your car and check that, but otherwise,
13 don't bring those devices into the courtroom because of the
14 temptation to violate my instructions and to look for outside
15 sources of information.

16 Now, you're going to see, over the course of the trial,
17 the lawyers have those kind of tablets and smart devices.
18 Those are tools of the trade these days for practicing law,
19 and they're under strict instructions from me to keep them
20 silent so they don't sound or ring or disrupt this trial in
21 any way, but they are entitled to use them. And don't feel
22 badly toward them if you see them using them and you had to
23 leave yours at home or in your car. But I'm going to ask you
24 to do that.

25 Also, ladies and gentlemen, while you're over the lunch

1 break, you're going to find in the jury room these plastic
2 see-through face shields that I mentioned to you earlier.
3 Please replace your face masks with a see-through face shield
4 and wear it when you come back into the courtroom, and wear it
5 through the rest of the trial whether you are vaccinated or
6 not vaccinated.

7 As I said, it's almost practically impossible to try a
8 jury trial without being able to see the complete faces, the
9 expressions, and read the faces of the jury. So that will
10 accomplish that fact and it will still provide a level of
11 protection for everybody.

12 Now, it is almost 20 minutes after 12:00. Lunch is in
13 the jury room waiting on you. We'll try to reconvene as close
14 to 1:00 as possible.

15 With those instructions, ladies and gentlemen, you're
16 excused for lunch at this time.

17 (Whereupon, the jury left the courtroom.)

18 THE COURT: Counsel, not to go terribly far over the
19 lunch break, I may want to see you in chambers before 1:00 to
20 pick up where we left off on some overnight disputes.
21 Otherwise, at least for the next 30 minutes, you're excused
22 for recess.

23 Court stands in recess.

24 (Lunch recess.)

25 THE COURT: Be seated, please.

1 Counsel, based on our discussions in chambers, I
2 understand there are one or two matters you'd like to bring up
3 with the Court before I bring in the jury.

4 Let me hear from you at this time.

5 MR. SHEASBY: Jason Sheasby for the Plaintiffs, Your
6 Honor. Plaintiffs would like confirmation the Court has ruled
7 that negotiation history can come in in front of the jury and
8 has withdrawn its MIL on that subject.

9 THE COURT: That's my understanding. Does Defendant
10 have anything different on that?

11 MR. MUELLER: Joe Mueller for the Defendant, Your
12 Honor.

13 That's correct. We understand that to be Your Honor's
14 ruling. And so I think the parties are in agreement that Your
15 Honor has so ruled.

16 And if I could, Your Honor, if I could just take a moment
17 to just very briefly preserve our own positions on these
18 issues. We've done our best to memorialize in Docket No. 666
19 various rulings that Your Honor has made on issues in this
20 case, including over the last couple of days.

21 We don't want to keep getting up to interrupt the
22 proceedings, Your Honor. So we respectfully request the
23 running objection with respect to those issues, for example,
24 the admissibility of the Qualcomm agreement. So we
25 respectfully request that that standing running objection as

1 opposed to interrupting the proceedings, Your Honor.

2 THE COURT: I have no problem with the Defendants
3 having a running objection as outlined.

4 MR. MUELLER: Thank you, Your Honor. The final
5 issue is just, we understood, I just wanted to state on the
6 record, that your *Daubert* rulings are definitive. We will, of
7 course, strictly comply with them, and we understand that we
8 do not need to repeatedly object to the relevant expert
9 opinions that were briefed in *Daubert*.

10 THE COURT: That is my understanding, and that is
11 certainly my preference. I want as few interruptions or
12 disruptions during the trial as possible, and at the same time
13 I don't intend to be an impediment to anybody preserving a
14 point that they believe they need to be preserved.

15 MR. MUELLER: Thank you, Your Honor.

16 Finally, Mr. Sheasby and I conferred on the break that we
17 think, again, in the interest of avoiding interrupting the
18 proceedings, that we should seal the opening statements.
19 There's going to be some discussion of license negotiations
20 and certain agreements. That has not only confidential
21 information of the parties but certain third parties. And so
22 we would ask that the opening statements be sealed.

23 For Mr. Sheasby's opening statement, I believe he's going
24 to get into some information that Mr. Blasius cannot see.
25 It's third-party confidential. Mr. Blasius can see my entire

1 opening statement. He's the corporate representative for
2 Plaintiffs.

3 THE COURT: What's your understanding on that, Mr.
4 Sheasby?

5 MR. SHEASBY: Your Honor, that is correct. We are
6 going to show some Qualcomm highly confidential information.
7 There are two ways of doing it. One, we can seal the entire
8 opening. Two, we can just seal -- we can go into seal when I
9 show those slides. I'll only do it once.

10 The issue is, is that I'm very tight on 30 minutes, and I
11 don't think I can both keep it at 30 minutes and seal in the
12 middle of it.

13 THE COURT: I'll seal the entirety of Plaintiff's
14 opening statement as requested by both sides.

15 MR. SHEASBY: And, Your Honor, I just want to be
16 clear on something. On the withdrawal of the motion in limine
17 on licensed negotiations, my understanding is that Apple --
18 it's not a ruling over the opposition of Apple, it's just for
19 the purposes of appeal, that Apple invited licensing
20 negotiation history to come into the record.

21 And I'm a little troubled by the fact that Apple is
22 referring to this as your ruling, and the record is not clear
23 that it was a ruling requested by Apple. And I just wanted to
24 make that record clear.

25 THE COURT: Well, whatever the ways or means, I

1 think it's clear at this point that neither side believes it's
2 improper to go into that.

3 MR. MUELLER: Your Honor, I have to be correct on
4 this stuff. We did object. Your Honor overruled the
5 objection. We're not withdrawing the MIL.

6 THE COURT: Okay. We know where we stand now. The
7 record speaks for itself.

8 MR. MUELLER: Thank you, Your Honor.

9 THE COURT: All right. Anything else before I bring
10 in the jury?

11 MR. MUELLER: No, Your Honor.

12 MR. SHEASBY: Nothing for Plaintiffs, Your Honor.

13 THE COURT: All right. Let's bring in the jury,
14 please.

15 (Whereupon, the jury entered the courtroom.)

16 THE COURT: Please be seated, ladies and gentlemen.

17 Welcome back, members of the jury. I now have some
18 preliminary instructions that I need to give you on the record
19 before we start with the opening statements from the attorneys
20 and then get on to the evidence.

21 You've now been sworn as the jurors in this case, and as
22 the jury, you are the sole judges of the facts. As such, you
23 will decide and determine what all the facts are in this case.
24 As the Judge, I will give you instructions on the law; I will
25 decide issues of law, evidence, and procedure that arise

1 during the trial; I will oversee the conduct of the trial and
2 maintain the decorum of the courtroom.

3 At the end of the evidence, I'll give you detailed
4 instructions about the law that you are to apply in deciding
5 this case. And at that time, I'll give you a list of
6 questions that you are then to answer. This list of
7 questions, ladies and gentlemen, is called the verdict form,
8 and your answers to those questions will need to be unanimous,
9 and those unanimous answers to those questions will constitute
10 the jury's verdict in this case.

11 Now let me briefly tell you what's involved in this case.
12 I know you've all seen the patent film produced by the Federal
13 Judicial Center, but I need to give you some additional
14 instructions now and on the record.

15 Patents are granted or denied by the United States Patent
16 and Trademark Office, sometimes called the Patent Office,
17 sometimes simply called the PTO. A valid United States patent
18 gives the holder, the patentholder, the right for up to 20
19 years from the date the application is filed to prevent others
20 from making, using, offering to sell, or selling the patented
21 invention within the United States, or importing it into the
22 United States without the patentholder's permission.

23 A patent is a form of property called an intellectual
24 property. And like all other forms of property, a patent may
25 be bought or sold. The process of obtaining a patent is

1 called patent prosecution. And to obtain a patent, one must
2 first file an application with the PTO, the United States
3 Patent and Trademark Office. The PTO, ladies and gentlemen,
4 is an agency of the United States government, and it employs
5 trained examiners who review applications for patents.

6 As I told you -- let me tell you that this process of
7 evaluating patent applications goes back and forth between the
8 examiner and the applicant for some time until the examiner is
9 satisfied that the application meets all the requirements for
10 a patent. And in that case the application issues as a United
11 States patent. In the alternative, if the examiner ultimately
12 concludes that the application should be rejected, then no
13 patent issues.

14 Now, to help you follow the evidence, I'll give you a
15 brief summary of the positions of the two parties. As you're
16 all aware, the party that brings a lawsuit is called the
17 plaintiff. If there's more than one plaintiff, they are the
18 plaintiffs. The plaintiffs, and there are more than one in
19 this case, are Optis Wireless Technology, LLC; Optis Cellular
20 Technology, LLC; PanOptis Patent Management, LLC; Unwired
21 Planet, LLC; and Unwired Planet International Limited, which
22 you're going to hear referred to throughout the trial,
23 collectively, either as Plaintiffs, Optis, or PanOptis. Any
24 of those terms refer to these designated Plaintiffs in the
25 case.

1 And as you well know, the party against whom a lawsuit is
2 brought is called the defendant, and in this case the
3 Defendant is Apple, Inc., who you'll referred to simply as the
4 Defendant or as Apple.

5 Now, as I told you during jury selection, this is a case
6 to set a fair and reasonable damages award for already
7 established patent infringement. There are five separate
8 United States patents that you're going to hear about during
9 this trial.

10 The first is U.S. Patent No. 8,019,332. And as I'm sure
11 you know, patents are commonly referred to by their last three
12 digits, the last three digits of the patent number. So in
13 this case, Patent No. 8,019,332 will be referred to as the
14 '332 patent.

15 The second is 8,385,284, which you'll hear referred to as
16 the '284 or the '284 Patent.

17 The third U.S. patent at issue is United States Patent
18 No. 8,411,557, which you'll hear referred to as the '557
19 Patent.

20 The fourth U.S. patent is United States Patent No.
21 8,102,833, which you'll hear called the '833 or the '833
22 patent.

23 And the fifth and final U.S. patent is United States
24 Patent No. 9,001,774, which you'll here called the '774
25 Patent, or the '774 Patent.

1 These patents collectively may be referred to at various
2 times in the case as the Patents-in-Suit. You may also hear
3 them referred to collectively as the asserted patents. And
4 these patents generally relate to cell phone technology.

5 It's already been decided that certain Apple products
6 infringe one or more claims of the asserted patent and the
7 claims that the asserted patents are not invalid. As a
8 result, this trial is solely about setting a fair and
9 reasonable compensation for that infringement. This trial
10 will only be concerned with this issue.

11 Your job as the jury, ladies and gentlemen, is to
12 determine the amount of monetary damages to be awarded to the
13 Plaintiff as compensation for Apple's previously established
14 infringement.

15 Now, during the trial it's likely that you're going to
16 hear the Patents-in-Suit, the five patents I just mentioned,
17 being referred to as standard essential patents, or SEPs.
18 Standard essential patents, as I've mentioned, are patents
19 that have been declared to be part of a standard in a certain
20 field. And this standard is set and maintained by a global
21 body to ensure that certain processes and devices operate and
22 work in the same way anywhere in the world.

23 Earlier, I gave you the example of a cell phone that
24 works in the United States, and if you fly across the Atlantic
25 ocean to London, England, when you get off of the airplane in

1 London, England, the same cell phone works there just like it
2 did in the United States.

3 Now, patents relating to such a common and standard
4 technology are recognized as impacting that standard
5 technology, and are contributed to and declared by their
6 owners to be essential to that standard. These are called, as
7 I mentioned, standard essential patents. And in this case the
8 five Patents-in-Suit have been declared by their owners to be
9 standard essential patents in the field of wireless
10 communications.

11 And in this case one of the global bodies that oversees
12 and maintains this standard is called the European
13 Telecommunications Standards Institute, or ETSI, which you'll
14 hear referred to throughout the case by those fourth letters
15 being pronounced ETSI.

16 Since the asserted patents are standard essential
17 patents, you're going to hear about the standard, and the
18 contribution of these patents to the standard, and the work of
19 ETSI regarding the standard, all as a part of this trial. And
20 I'll give you more detailed instructions on this at the end of
21 the trial.

22 The Plaintiff, Optis, has agreed to license the
23 Patents-in-Suit as a part of one of these standards that I
24 mentioned on RAND, R-A-N-D, terms. RAND stands for reasonable
25 and nondiscriminatory. And the standard setting organizations

1 often require members to license to others to use standard
2 essential patents on these RAND, reasonable and
3 nondiscriminatory, terms. Sometimes these terms are also
4 referred to as FRAND, fair, reasonable, and nondiscriminatory.
5 And I'll give you more detailed instructions on these matters
6 at the end of the trial.

7 Now, ladies and gentlemen, I know that there are a lot of
8 new words and new concepts that have been thrown at you since
9 you arrived here for jury duty this morning. I'm going to
10 define a lot of these words and concepts for you as we go
11 through my instructions. The attorneys are going to discuss
12 them with you in their opening statements. The witnesses are
13 going to help you through their testimony to understand these
14 concepts and terms.

15 So, please, do not feel overwhelmed at this point. I
16 promise you it will all come together as we go through the
17 trial.

18 Now, your job in this case is to decide what amount of
19 money damages, if any, to be awarded to the Plaintiffs as
20 compensation for the infringement of their five patents. My
21 job in this case is to tell you what the law is, handle
22 rulings on evidence and procedure, and to oversee the trial as
23 efficiently and effectively as possible.

24 In deciding the issues that are before you, you will be
25 asked to consider specifically the rules, and I'll give you an

1 overview of those rules now, and then at the conclusion of the
2 case I'll give you more detailed instructions.

3 The first and only issue that you're going to be asked to
4 decide in this case is what amount of money damages should be
5 awarded to the Plaintiffs Optis to compensate it for Apple's
6 previously established infringement.

7 A damages award, ladies and gentlemen, must be adequate
8 to compensate the patentholder for the infringement, and in no
9 event may a damage award be less than what the patentholder
10 would have received had it been paid a reasonable royalty for
11 the use of its patents.

12 However, the damages that you award, if any, are meant to
13 compensate the patentholder and they are not meant to punish
14 the Defendant. You may not include in any damages award an
15 additional amount as a fine or a penalty above what is
16 necessary to fully compensate the patentholder for the
17 infringement.

18 Additionally, damages cannot be speculative, and the
19 Plaintiffs in this case, Optis, must prove the amount of their
20 damages to you for this infringement by a preponderance of the
21 evidence.

22 In this case, the Plaintiffs are seeking damages for the
23 period from February the 25th, 2019, to August the 3rd, 2020.
24 February the 25th, 2019, to August the 3rd, 2020. And I'll
25 give you more detailed instructions about the calculation of

1 damages at the conclusion of the trial, including giving you
2 specific instructions with regard to the calculation of a
3 reasonable royalty.

4 Now, you're going to be hearing from a number of
5 witnesses over the course of the trial, ladies and gentlemen,
6 and I want you to keep an open mind while you're listening to
7 the evidence and not decide any of the facts until you've
8 heard all of the evidence. This is important.

9 While the witnesses are testifying during the trial,
10 remember you, the jury, will have to decide the degree of
11 credibility and believability to allocate to each of the
12 witnesses and to all of the evidence.

13 So while the witnesses are testifying, you should be
14 asking yourselves things like this: Does the witness impress
15 you as being truthful? Does he or she have a reason not to
16 tell the truth? Does he or she have any personal interest in
17 the outcome of the case? Does the witness seem to have a good
18 memory? Did he or she have the opportunity and ability to
19 observe accurately the things that they testified about? Did
20 the witness appear to understand the questions clearly and
21 answer them directly? And, of course, does the witness'
22 testimony differ from the testimony of other witnesses. And
23 if it does, how does it differ?

24 These are some of the kinds of things you should be
25 thinking about while you're listening to each witness over the

1 course of this trial.

2 Also, I want to talk to you briefly about expert
3 witnesses. When knowledge of a technical subject may be
4 helpful to the jury, a person who has special training and
5 experience in that particular field, we call them an expert
6 witness, is permitted to testify to the jury about his or her
7 opinions on those technical matters.

8 However, ladies and gentlemen, you're not to required to
9 accept an expert witness or any witness' opinions at all.
10 It's up to you to decide who to believe and who not to believe
11 and whether a witness is telling you what is correct or
12 incorrect.

13 Now, I anticipate that over the course of this trial
14 there will be expert witnesses testifying in support of each
15 side of this case. But when that happens, it will be up to
16 you to listen to their qualifications. And when they give you
17 an opinion and explain the basis for that opinion, you will
18 have to evaluate what they say, whether you believe it, and to
19 what degree, if any, that you want to give it weight.

20 Remember, ladies and gentlemen, judging and evaluating
21 the credibility and believability of each and every witness is
22 an important part of your job as jurors.

23 Now, during the course of the trial, it's possible that
24 there will be testimony from one or more witnesses that are
25 going to be presented to you through what's called a

1 deposition. In trials like this, it's very difficult to get
2 every witness here at the same time. So before the trial
3 begins, the lawyers for both sides take the depositions of the
4 witnesses in advance of the trial.

5 In a deposition, the witness is present, they are sworn
6 and placed under oath, a court reporter is present, and the
7 witness is asked questions by counsel for the parties, and the
8 witness answers those questions, and both the questions asked
9 and the answers given are taken down and recorded. They are
10 often recorded by video-recording equipment.

11 Portions of those recordings of those questions and their
12 answers may be played back to you as part of this trial so
13 that you can see the witness and hear their testimony. This
14 deposition testimony is entitled to the same consideration
15 insofar as possible, and needs to be judged by you as to the
16 credibility, weight, and otherwise considered in the same way
17 as if the witness had been physically present and given their
18 testimony from the witness stand during the course of this
19 trial.

20 Now, during the course of the trial, it's possible that
21 the lawyers are going to raise certain objections. And when
22 they make objections, I will issue rulings on those
23 objections. It's the duty of an attorney on each side of the
24 case to object when the other side offers testimony or other
25 evidence that the attorney believes is not proper.

1 Also, upon allowing the testimony or other evidence to be
2 introduced over the objection of an attorney, the Court does
3 not, unless expressly stated, indicate any opinion about the
4 weight or the effect of such evidence. As I've said, ladies
5 and gentlemen, you, the jury, are the sole judges of the
6 credibility and believability of all the witnesses and the
7 weight and effect to give to all the evidence.

8 Now, I want to compliment the parties in this case
9 because up until today, they have worked with the Court very
10 diligently to go through many, many exhibits and documents.
11 And the exhibits and documents that you're going to see in the
12 course of this trial have already been considered by the
13 Court, I've considered any objections that have been made,
14 I've heard the arguments from the objecting parties, I've
15 heard responses from the offering party, and I have issued
16 rulings on what's admissible and proper to present to the jury
17 during the course of this trial.

18 And by doing that with the diligent hard work of the
19 lawyers for both sides, I promise you, ladies and gentlemen,
20 we have saved you many, many hours of having to sit here and
21 listen to all that during the course of the trial. And both
22 sides are to be complimented for the way they've worked with
23 the Court in streamlining this process.

24 Even so, it's still possible that objections will arise
25 over the course of the trial. If I should sustain an

1 objection to a question addressed to a witness, then you must
2 disregard the question entirely and you may draw no inference
3 from its wordings, and you may not speculate about what the
4 witness would have said if I had permitted them to answer the
5 question.

6 If I should overrule an objection, on the other hand,
7 then you should consider the answer and the question just as
8 if no objection had been made in the first place.

9 And you should know, ladies and gentlemen that the law of
10 the United States permits a judge to comment to the jury
11 regarding the evidence in a case, but such comments from the
12 judge on the evidence are only an expression of the judge's
13 opinion and the jury may disregard those comments entirely
14 because, as I've told you, you, the jury, are the sole judges
15 of the facts, you are the sole judges of the credibility of
16 the witnesses and how much weight to give to the testimony
17 that's presented during this trial.

18 And even though the law permits me to comment on the
19 evidence to you over the course of this trial, as I indicated
20 earlier, I am going to work very hard not to comment on any of
21 the evidence, not the communicate to you how I feel about any
22 of the testimony or of the evidence during the course of the
23 trial, because it's your job and your job alone to determine
24 the facts of this case from evaluating and considering all of
25 the testimony and evidence in this case.

1 Now, Mr. McRoberts, our court reporter in front of me, is
2 taking down everything that's said during the course of the
3 trial. But the transcript, the written version of everything
4 that's said during this trial, is not going to be available to
5 you to take with you during to the jury room and review during
6 your deliberations. That means, ladies and gentlemen, you're
7 going to have to rely on your memory of the testimony and the
8 evidence over the course of this trial.

9 In a moment we are going to have juror notebooks to pass
10 out to you, although I understand they are yet to be brought
11 into the courtroom, and they should be on their way here any
12 minute. As soon as I get them, I will have them passed out to
13 you.

14 THE COURT SECURITY OFFICER: Your Honor, I believe
15 we have them now.

16 THE COURT: We have them now?

17 THE COURT SECURITY OFFICER: Yes, sir.

18 THE COURT: All right. Then, if you will, please
19 pass them out to the jury. Thank you. I didn't see them over
20 there.

21 As you get these notebooks, ladies and gentlemen, you'll
22 notice that in the front of them, you each have a copy of each
23 of the five Patents-in-Suit, the asserted patents in this
24 case.

25 You'll also see that you have a section of pages for

1 witnesses where each person who may testify in the trial has a
2 page with their photograph superimposed at the top of the page
3 and their name underneath. The Court's found over the course
4 of many years that being able -- or for the jury, rather,
5 being able to go back and look at a picture of each person who
6 testifies is helpful during the time that you deliberate and
7 attempt to reach your unanimous verdict.

8 Also, you'll find in there a brand new legal pad for
9 note-taking over the course of the trial, and you should find
10 a pen in the front flap of each notebook for additional
11 note-taking if you choose to do that.

12 It's going to be up to each of you to decide whether you
13 want to take notes during the course of the trial, and if you
14 do, how detailed you want those notes to be.

15 These notebooks, ladies and gentlemen, should be in your
16 possession at all times. If you're not in the courtroom, they
17 should be in the jury room on the table, and that's where you
18 should leave them overnight when we finish each day's portion
19 of the trial. If you're in the courtroom, they should be in
20 your own physical possession.

21 Now, the one exception to that is, there may be times
22 when we will take a short recess, and you're only going to be
23 out of the courtroom a short period of time, in which case I
24 may say to you, ladies and gentlemen, you may simply close and
25 leave your notebooks in your chairs. And if that's the case

1 and if I say that, simply close them and leave them in the
2 chair that you're sitting in. It will be there when you
3 return.

4 But if we're going to be out of the courtroom any length
5 of time, I'll ask you to take those with you and keep them in
6 your possession.

7 Now, in a moment we're going to get on to the lawyers'
8 opening statements. These opening statements by the lawyers
9 for the parties are designed to give you a road map of what
10 each side expects to offer by way of evidence. And you should
11 remember, ladies and gentlemen, throughout this trial that
12 what the lawyers tell you is not evidence. The evidence is
13 the sworn testimony that you'll hear from the witnesses from
14 the witness stand, under oath and subject to
15 cross-examination, as well as the exhibits and other documents
16 that the Court has already admitted into evidence as exhibits
17 and that are presented to you over the course of the trial.
18 That's the evidence in this case.

19 What the lawyers tell you is not evidence. What the
20 lawyers tell you is simply their impression of what the
21 evidence is. And they have a duty to point out to you what
22 they believe the evidence shows. But, remember, what the
23 lawyers tell you is not evidence.

24 And what the lawyers tell you is not or are not
25 instructions on the law. The only instructions on the law

1 that you will receive will come directly from me to you over
2 the course of this trial.

3 Now after the opening statements are presented by both
4 sides, the Plaintiffs will have an opportunity to call their
5 witnesses and present their evidence. That's called the
6 Plaintiffs' case in chief. Once the Plaintiff has called all
7 their witnesses and they've been examined and cross-examined,
8 then the Plaintiff will rest its case in chief.

9 When the Plaintiff rests its case in chief, then the
10 Defendant will put on its case in chief. The Defendant will
11 call its witnesses, they'll be examined and cross-examined.
12 And when all of the Defendant's witnesses have been presented,
13 the Defendant will rest its case in chief.

14 At that moment, the Plaintiff will have an opportunity,
15 if it chooses to, to call rebuttal witnesses to rebut what's
16 been put on by the Defendants. The Plaintiff's not required
17 to do that; the Plaintiff may elect not to do that. We will
18 find out when the Defendant rests its case in chief if the
19 Plaintiff intends to recall rebuttal witnesses.

20 If the Plaintiff calls rebuttal witnesses, then when
21 those witnesses, whether it's one or more than one, when those
22 witnesses have testified, then the Plaintiff will rest its
23 rebuttal case.

24 When the Plaintiff rests its rebuttal case, then you will
25 have heard all the evidence in this trial, and at that time I

1 will give you instructions on the law that you are to apply in
2 deciding the questions you are asked to answer.

3 After I've given you my final instructions, which are
4 sometimes called, and I'm sure you've heard this term before,
5 the Court's charge to the jury, once I have given you my final
6 instructions, the Court's charge to the jury, then counsel for
7 the Plaintiff and the Defendant will present their closing
8 arguments.

9 When you have heard closing arguments from both Plaintiff
10 and Defendant, then I will instruct you to retire to the jury
11 room and to deliberate on your verdict. And that's the
12 moment, as I mentioned earlier, ladies and gentlemen, when you
13 go from being prohibited from discussing the evidence in this
14 case among the eight of you to being required to discuss the
15 evidence in this case among the eight of you in an attempt to
16 answer the questions in the verdict form unanimously.

17 Let me repeat my earlier instruction to you that you are
18 not to communicate or discuss anything about this case in any
19 way with anyone, including the eight of yourselves.

20 Let me also remind you of my instruction earlier that if
21 during the course of this trial you come in close contact with
22 anybody associated with one side or the other, they're not
23 going to speak, they're not going to be engaging, they're not
24 going to be friendly. That's simply because they're following
25 the instructions I've given them.

1 So when that happens, don't hold it against them. Don't
2 think they're being rude or unfriendly. Just understand that
3 they're following the instructions that the Court has given
4 them.

5 All right. At this time, we will hear opening statements
6 from the parties.

7 Plaintiff, you may present your opening statement to the
8 jury.

9 MR. BAXTER: Your Honor, could we approach the bench
10 for just one brief moment?

11 THE COURT: Approach the bench, counsel.

12 MR. BAXTER: Thank you, Your Honor.

13 (The following was had outside the hearing of the
14 jury.)

15 THE COURT: What's up?

16 MR. BAXTER: I think we want to back up, Judge, and
17 have Mr. Blasius in the courtroom until such time as it needs
18 to be sealed, at which time we will notify the Court it needs
19 to be sealed and he could leave. But if he could hear the
20 first part, we would appreciate it. We would like to change
21 our mind on that.

22 THE COURT: All right. As long as there's a request
23 to seal the courtroom before anything confidential is put
24 forward.

25 MR. BAXTER: We will, Your Honor.

1 THE COURT: We'll do it that way.

2 MR. BAXTER: Thank you, Judge.

3 (The following was had in the presence and hearing
4 of the jury.)

5 THE COURT: All right. We'll proceed with opening
6 statements from the parties.

7 Plaintiff, you may present your opening statement to the
8 jury. Would you like a warning on your time, Mr. Sheasby?

9 MR. SHEASBY: Yes, Your Honor. If I could have a
10 warning at 15 minutes and at five minutes.

11 THE COURT: When you have 15 minutes and five
12 minutes remaining, I will warn you. You may proceed.

13 MR. SHEASBY: Your Honor, may it please the Court.

14 Ladies and gentlemen of the jury, my name is Jason
15 Sheasby, and I've been asked to represent the Optis entities
16 in this litigation. I was borne in California. I spent my
17 whole life in California. I'm married my wife, and I have two
18 children, and we also raise a niece and nephew.

19 THE COURT: Mr. Sheasby, pull the microphone close
20 to you, please.

21 MR. SHEASBY: I want to begin by doing what Judge
22 Gilstrap did which is thanking you for your service. And one
23 of the interesting things about the right to a trial by jury,
24 it's in the Bill of Rights, is a lot of us think that the
25 right to a trial by jury is the right for Apple and for

1 PanOptis to have a jury. It's actually not what the founders
2 meant.

3 When the founders passed the right to trial by jury, the
4 idea was that the citizens of our country decide the most
5 important issues, the citizens decide the most important
6 issues. The right to trial by jury is your right. It's your
7 right as citizens because the founders placed the power in
8 your hands.

9 Now, in 2005, a group of the leading cellular
10 telecommunications companies in the world came together to
11 design the next generation cellular network. And in 2005
12 there actually was not a lot of data usage. It was before the
13 smartphone revolution. There were some smartphones, but there
14 was not a mass amount of data.

15 And the way it worked is the technology companies came
16 together, and they actually reviewed proposals by other
17 companies to pick ones that they thought would work in the new
18 telecommunications system they were creating. That new
19 telecommunications system was called LTE. LTE stands for
20 long-term evolution.

21 And the design of this system was for year after year
22 after year, it would be stable and be able to handle the mass
23 amounts of data that these companies predicted would be going
24 across the networks in later years.

25 There were three companies that had a very significant

1 role in that process that are at issue today. Those companies
2 were Samsung, LG, and Panasonic. They made a huge risk. In
3 2008 alone, while they were building this next generation
4 network, they spent \$14 billion in a single year on R and D.
5 They made a huge risk investing in long-term evolution.

6 The community identified five of their technologies that
7 are absolutely crucial to long-term evolution. In fact,
8 they're essential to long-term evolution. Those five
9 technologies were recognized by the United States government
10 with five patents. Those five patents are the patents in this
11 case.

12 Now, LG, Panasonic, and Samsung, and Ericsson, PanOptis
13 holds the patent rights of those companies. And the reason it
14 holds those patent rights is because it has been selected by
15 LG, Panasonic, and Ericsson to protect their intellectual
16 property, to focus on the fact that there were individuals who
17 invested heavily, heavily, into the creation of a long-term
18 evolution.

19 And then there were individuals who just took it and did
20 not invest heavily in long-term evolution. One of the
21 entities that took and did not invest in long-term evolution
22 is Apple. Apple played no meaningful role in the creation of
23 long-term evolution. Apple has reaped significant profits
24 from the use of long-term evolution.

25 The sole issue that is to be cited in this proceeding is

1 the damages that we've paid on those five essential patents.

2 We spoke about the fact that the right to trial by jury
3 is a constitutional right. Patents are actually in the
4 Constitution. Our founders 230 years ago, 230 years and
5 counting years ago, actually realized the importance of
6 innovation in our country, and they had an idea. They wanted
7 everyone from throughout the world to bring the best ideas to
8 our country and to file patents on them. And by doing so, we
9 could improve our economy and improve creation and improve
10 innovation.

11 And the Congress actually had a very important insight.
12 In order to attract the best innovation to our country, they
13 were going to grant patent rights. The patent right is a
14 property right. It's just as sacred as the right to our
15 house. It's just as sacred as the right to our homestead. It
16 cannot be violated without permission. This court is designed
17 to determine what the damages are for the use of these five
18 patents.

19 We spoke about LTE, long-term evolution. From 2012 to
20 2020, the best technology Apple had for its cell phones was
21 long-term evolution. That's all they had. They had nothing
22 better. And they used it every single year. Every single
23 year between 2012 and 2020, Apple used the technology
24 reflected in the five patents at issue in this case.

25 This is PanOptis. PanOptis was created to protect the

1 innovations of Panasonic, LG, and Ericsson. It also holds
2 patents from Samsung. And its obligation is to ensure takers
3 pay a fair and reasonable and nondiscriminatory rate for the
4 use of our technology.

5 The patent statute makes clear that the assessment of
6 damages relates to the use of the invention made by Apple.
7 That's what Congress requires to assess the use of the
8 invention made by Apple.

9 Now, you're going to hear from Apple's counsel, and Judge
10 Gilstrap made clear that attorney argument is not evidence,
11 but ask yourself if Apple shows you any data on the use it
12 makes of long-term evolution, of the use it makes of these
13 five patents in its opening.

14 These are the five patents. We refer to them by the last
15 three numbers. So, for example, we refer to the Samsung
16 patent as the '774 Patent. Each of these patents are
17 essential. This is the history of LTE, and you see this
18 massive explosion in 2010, this massive use of data. And
19 Apple gained market share and began to dominate the cell phone
20 industry as LTE was exploding, as the use of cellular data was
21 exploding.

22 We're going to talk about three issues in this trial.
23 First, we're going to talk about the technical importance of
24 the patents. Second, we're going to talk about the use of the
25 patents by Apple because that's what Congress requires. The

1 statute passed by the United States Congress makes clear that
2 the focus of damages is based on the use of the technology by
3 Apple. And the third thing we're going to discuss is, what
4 the fair, reasonable, and nondiscriminatory rate that Apple is
5 obligated to pay it.

6 We talked about LTE. LTE involved engineers coming
7 together to select designs that would work for this long-term
8 system. And you know what's neat? This is actually a picture
9 from a meeting of the engineers. And you see right in the
10 corner, you see whose symbol is there? It's Samsung.
11 Samsung, LG, Ericsson, Panasonic were crucial contributors to
12 the construction of long-term evolution.

13 The first step in our analysis is the technical analysis
14 of the value of the patents. PanOptis has asked two
15 independent experts who are experts in the field of cellular
16 technology, Professor Mahon and Professor Madisetti.
17 Professor Mahon designed cellular systems for the Central
18 Intelligence Agency in various Department of Defense entities
19 for a number of years. Professor Madisetti is a researcher
20 who does significant work with the Department of Defense. And
21 I'd like them both to stand right now. Thank you very much.

22 Professors Mahon and Madisetti actually worked with a
23 group of elite technologists to design nationwide studies to
24 calculate and assess the amount of use of Apple's -- of
25 PanOptis' patents based on Apple's technology across the

1 nation to do this with these elite technologists.

2 They also worked to design specialized simulations to
3 assess the value of the patents, the technical improvement in
4 the value of the patents. And based on their analysis, they
5 concluded that the five patents in this case improved the
6 performance of Apple's devices by 25 percent. Twenty-five
7 percent.

8 Now, this is a very important case and you'll hear Apple
9 will tell you this is a very important case to them. There is
10 only one party who did nationwide testing to assess the use of
11 these patents. There was only one party that designed
12 specialized simulation to assess the importance of these
13 patents. That is PanOptis.

14 You will hear no evidence from Apple about simulation or
15 testing. None. They have no simulation or testing data that
16 they performed to dispute the analysis of Professors Mahon and
17 Madisetti. Now, why would a company like Apple with vast
18 access to technologists not have its own nationwide
19 independent testing and nationwide simulations?

20 The second issue we're going to discuss is use of the
21 patents, long-term evolution. And you'll see between 2005 and
22 2008, LG, Panasonic, and Samsung filed these patent
23 applications and then presented them to the body that
24 constructed LTE, not the patent applications but the designs.
25 And those -- that body accepted these designs. In 2010 and

1 2011, both Samsung and LG launched LTE phones.

2 Here's an interesting fact. Between 2008 and 2010 when
3 long-term evolution was being created, in 2008 when Samsung,
4 Panasonic, and LG spent \$14 billion in R and D, Apple was
5 selling a 2G smartphone. At the same time Panasonic, Samsung,
6 and LG were creating long-term evolution and spending billions
7 and billions, Apple was selling 2G and was not investing in
8 communications technology.

9 In terms of communications technology, Apple fell
10 significantly behind.

11 In September of 2012, Apple realized it had to launch its
12 own LTE phone, and it did so. And between 2012 and August
13 2020, the period of damages in this case, every single LTE
14 smartphone, LTE tablet, and LTE watch that Apple sells, which
15 is to say all their cellular products, used long-term
16 evolution and they use the five technologies that are at issue
17 in this case.

18 Apple has never found anything better; they've never been
19 able to do anything different. This is the technology they
20 use.

21 To give you the scale of Apple's use of the technology,
22 between 2012 and August 2020, Apple sold 575 million products
23 that use PanOptis' technology. 575 million products.

24 PanOptis received patents from LG, Samsung, and
25 Panasonic, and its obligation is to protect those patents and

1 to make sure that takers pay a fair and reasonable amount for
2 them.

3 And LG, Samsung, and Panasonic were not quiet about the
4 importance of these patents. Just the opposite. Between 2008
5 and 2010, they made public announcements that these patents,
6 they believe, were essential and they made clear to the public
7 that folks could use this technology because they recognized
8 how important it was, but folks would be obligated to pay
9 fair, reasonable, and nondiscriminatory royalties. They made
10 that clear, explicit, and public.

11 In 2014 through 2017, PanOptis did the same. PanOptis
12 carefully analyzed the patents that it received for
13 protection, and it is well, publicly announced the patents are
14 essential, and made clear that folks could use the technology,
15 but they were obligated to pay a fair, reasonable, and
16 nondiscriminatory license fees in exchange for use of that
17 technology.

18 You heard reference by Judge Gilstrap to ETSI, the
19 European Telecommunications Standards Institute. And let me
20 describe briefly what that is.

21 The organization that creates LTE, that chooses what
22 technology received the honor of being part of LTE, is called
23 3GPP. ETSI is a European organization that validates that
24 process and collects the statements by companies who believe
25 they may have patents that are essential and statements by

1 companies that they will license those patents but folks have
2 to pay fair, reasonable, and nondiscriminatory rates. ETSI is
3 the clearing house that you go to for patents information.

4 Now, ETSI has made a very important instruction about
5 what it means to be entitled to a fair, reasonable, and
6 nondiscriminatory royalty. They make clear that
7 patentholders, IPR holders, IPR is the European word for
8 patent, should be adequately and fairly rewarded. Our patents
9 were declared to ETSI. As a result of that, we are entitled
10 to a fair, reasonable, and nondiscriminatory royalty for their
11 use by Apple. We are entitled to be adequately and fairly
12 rewarded.

13 The next issue to focus on is what is the value of the
14 patented technology to Apple. Well, we actually have some
15 information on this.

16 THE COURT: You have 15 minutes remaining.

17 MR. SHEASBY: We know that Apple charges
18 extraordinary amounts of money for the use of long-term
19 evolution. You can buy an iPad Pro without cellular
20 technology. You can buy an iPad Pro with cellular technology.
21 Apple will charge you \$150 just for the access to cellular
22 technology. And you'll hear that the vast majority of
23 cellular technology, cellular usage is long-term evolution.

24 Let me give you another example. Apple sells an iPod
25 Touch, which is basically a fancy phone without cellular

1 service. And you can compare that to the price of an iPhone
2 5s. They were both marketed at the same time. The only
3 functional difference between these two products is cellular,
4 and Apple charges \$350 for access to cellular.

5 Let me give you another example. An Apple Watch without
6 cellular sells for \$199. An Apple Watch with cellular sells
7 for \$299. Apple charges \$100 extra for cellular, for
8 long-term evolution.

9 This is objective evidence about the importance of this
10 technology.

11 We also know about the extraordinary use that Apple makes
12 of long-term evolution. In 2012, Apple launched its first LTE
13 phone, and it touted that it was able to ship 100 megabits per
14 second of data. But as Apple built its phones, as Apple made
15 them more complex, as Apple made them more valuable, it needed
16 something. It needed more and more long-term evolution.

17 The last cell phone that it launched during the period of
18 damages in this case was the iPhone 11, and they touted that
19 it used 10 times more LTE than the one in 2012. It's not just
20 that from 2012 to 2020 Apple sold 500 million iPhones,
21 tablets, and watches that used LTE. Apple used more and more
22 and more LTE. It depended on LTE. Its business was built on
23 fast access to cellular technology.

24 In order to quantify the amount of revenue that Apple
25 generates from the 25 percent speed increase, PanOptis

1 actually asked an independent economist who specialized in the
2 creation of surveys, who was trained by an economist in the
3 Federal Trade Commission, to quantify exactly how much damages
4 Apple makes from its products. And I'd like her to stand now.
5 Her name is Dr. Rebecca Reed-Arthurs.

6 Thank you, Doctor Arthurs.

7 Between February of 2019 and August of 2020, solely from
8 the use of these five patents, Apple has generated \$868
9 million in profits. I want to be clear. That's not the total
10 amount of profits Apple has made on its cellular products.
11 That is solely, solely, for the use of these patents. From a
12 period of 16 months, it generated \$868 million. You can
13 understand the extraordinary importance and value of this
14 technology to Apple.

15 In addition to Ms. Reed-Arthurs, we've also asked an
16 independent damages expert to speak. His name is David
17 Kennedy. I'd like Mr. Kennedy to stand.

18 Thank you, Mr. Kennedy.

19 Mr. Kennedy has negotiated over 200 license agreements.
20 In fact, he's the only independent expert you will hear from
21 who has actually negotiated FRAND royalties on agreements.
22 Apple has a damages expert. But for reasons that are unclear,
23 Apple chose not to bring someone who has any expertise
24 negotiating FRAND license agreements.

25 And what Mr. Kennedy will establish is that for each

1 iPhone that Apple sells, solely from the use of the technology
2 Apple makes \$8.79 in profits. And to put this in context,
3 Apple is proposing that it pay essentially a cent for every
4 cell phone it sells. I want to be clear about that. We are
5 in the litigation today because Apple makes \$8.75 per iPhone
6 from the use of the technology, and Apple wants to pay a tenth
7 of a cent.

8 Ultimately, based on an analysis by Mr. Kennedy in a
9 hypothetical negotiation where both parties have to give
10 something up, Mr. Kennedy concludes that PanOptis would allow
11 Apple to keep \$360 million of the profits it obtains solely
12 from the use of these patents, and PanOptis would take \$506
13 million.

14 Mr. Huynh, can I have slide No. 17, please?

15 In 2017, PanOptis approached Apple and asked Apple to
16 take a license to its portfolio of patents. And between 2017
17 and February of 2019, PanOptis repeatedly, repeatedly,
18 repeatedly asked Apple to take a license for the LTE
19 technology that PanOptis held. Apple declined. In fact,
20 Apple repeatedly told Mr. Blasius, our corporate
21 representative, we don't use your patents and your patents are
22 invalid. Repeatedly.

23 PanOptis made reasonable offers. In fact, its first
24 offer to Apple was approximately \$500 million. You will
25 recognize that number because it's the number that we are

1 asking for damages today, and it's been validated by Mr.
2 Kennedy, the only licensing expert in this case. Ultimately,
3 Mr. Blasius will testify that Apple said, we want litigation.

4 Your Honor, at this time I request that the courtroom be
5 sealed.

6 THE COURT: Based on counsel's request, I'll order
7 the courtroom sealed. If you're present and not subject to
8 the protective order that's been entered in this case, you
9 should exit the courtroom and are to remain outside until the
10 courtroom is reopened and unsealed.

11 (The courtroom was closed.)
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THE COURT: All right, counsel.

At this time I am going to order the courtroom unsealed, and I will direct the Court Security Officer to invite the public to return.

Mr. Mueller, you need to take down these demonstratives and turn the chart to a blank sheet, please.

MR. MUELLER: Yes, Your Honor. Thank you.

THE COURT: Counsel, let me inquire, does either party wish to invoke the Rule?

MR. MUELLER: Yes, Your Honor.

THE COURT: Invoke the Rule including or excluding experts?

MR. MUELLER: Excluding experts, and excluding corporate representatives as well, Your Honor.

THE COURT: All right. The Rule has been invoked. That means if you are a fact witness or you are not a

1 designated representative for one of the parties, then you
2 must excuse yourself and remain outside the courtroom until
3 you are called to testify.

4 And, counsel, I'll trust each side will monitor the
5 contents of the gallery and let me know if there's anybody
6 that is not outside the courtroom that should be.

7 If you're a fact witness and not an expert witness and
8 you're going to testify in this case, you should remain
9 outside the courtroom until you are called to give testimony.

10 Ladies and gentlemen, it's been an hour and 40 minutes
11 since we came back from lunch. We're going to take a short
12 recess. When we return, we will begin with the Plaintiff's
13 first witness.

14 This is one of those times when you can simply close your
15 notebooks and leave them in your chairs.

16 Please follow all my instructions, including not to
17 discuss the case with each other. And we will be back shortly
18 to begin with Plaintiff's first witness.

19 The jury is excused for recess.

20 (Whereupon, the jury left the courtroom.)

21 THE COURT: Let me see lead and local counsel in
22 chambers.

23 The Court will stand in recess.

24 (Brief recess.)

25 THE COURT: Be seated, please.

1 Plaintiff, are you prepared to call your first witness?

2 MR. SHEASBY: Plaintiff is prepared to call its
3 first witness, Your Honor.

4 THE COURT: Let's bring in the jury, please.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: Please be seated, ladies and gentlemen.
7 Plaintiff, call your first witness.

8 MR. SHEASBY: Your Honor, Plaintiffs call our CEO,
9 Mr. Brian Blasius.

10 THE COURT: Mr. Blasius, please come forward and be
11 sworn by our courtroom deputy.

12 (Whereupon, the oath was administered by the Clerk.)

13 THE COURT: Please come around, have a seat here at
14 the witness stand.

15 Feel free to pour yourself a glass of water if you'd
16 like.

17 All right, counsel. You may proceed with direct
18 examination.

19 BRIAN BLASIUS,
20 testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MR. SHEASBY:

23 Q. Good afternoon, Mr. Blasius. Can you state your name,
24 please?

25 A. Good afternoon. My name is Brian Blasius.

1 Q. And can you introduce your position?

2 A. Yes. I am the president and CEO of PanOptis.

3 Q. Can you tell us a bit about yourself?

4 A. Sure. I was born and raised in the suburbs outside of
5 Chicago. I am married to my wife Julie for the last 24 years.
6 She had worked for a while and then stayed home to help raise
7 our kids. And then she went back to work where she's now a
8 special education teacher with the local school district.

9 We have three children. My daughter is 20 years old.
10 She attends college. And I have two boys ages 18 and 15, and
11 my oldest is going to be going to college in a few weeks.

12 Q. What do you do with your free time?

13 A. Well, when my children were growing up, they were very
14 active in sports. I spent a lot of time volunteering and
15 coaching for a variety of their sporting initiatives,
16 especially in baseball and football. I continue to volunteer
17 with the high school football team today.

18 Q. Can you tell us about your education?

19 A. I received my Bachelor's in finance from Northern
20 Illinois University in 1993. And then while I was working at
21 Motorola, I ended up going back to school at night and I
22 received my MBA from Northwestern University in 2002.

23 Q. Can you tell us what PanOptis is?

24 A. PanOptis was a company that was formed to help protect
25 the innovations of some of the major contributors to today's

1 modern-day cellular communications networks.

2 Q. What companies are these?

3 A. Those companies include LG, Panasonic, and Samsung, who
4 are some of the major contributors to the cellular
5 communications industry and specifically LTE technology.

6 Q. You said Samsung as a founder of the company. Would
7 you --

8 A. Oh, excuse me. LG, Panasonic, and Ericsson, excuse me,
9 that were -- helped create PanOptis.

10 Q. Who worked with these companies to create PanOptis?

11 A. Those companies ended up working with a group of patent
12 lawyers and patent attorneys and technologists out of Plano,
13 Texas.

14 Q. Does PanOptis own patents from any other source besides
15 Ericsson, LG, and Panasonic?

16 A. Yes. We actually own patents from Samsung.

17 Q. How did the patents become part of the PanOptis? How did
18 the Samsung patents become part of PanOptis?

19 A. Well, Samsung had approached PanOptis in 2016 to help
20 solve some issues they were having with a company called
21 Unwired Planet. As part of that resolution, we actually
22 acquired the company. Samsung took a license to the patents
23 and ended up transferring a number of patents from their
24 portfolio to our program.

25 Q. How does PanOptis relate to the other Plaintiffs in this

1 lawsuit?

2 A. Well, when PanOptis was created, the founders actually
3 set up companies to hold the patents that it acquired from the
4 original contributors. In this case, we have Optis Wireless,
5 Optis Cellular, Unwired Planet, and Unwired Planet
6 International Limited. Those companies were set up to hold
7 the patents.

8 And PanOptis Patent Management was the entity that was
9 created to help protect those patents, manage the licensing
10 activities, and then ultimately has the employees that work
11 for the company. We have approximately 12 to 15 employees and
12 contractors. They actually were employed by an entity called
13 HillCo and were contracted out to the company to manage those
14 licensing efforts.

15 Q. You referred a license. What is a patent license?

16 A. A patent license is really a right to actually use the
17 patent in exchange for a payment. So if you think about it, a
18 patent is a property right. So much like a house or a car,
19 you may allow others to use that house or car, but in exchange
20 they would pay you a lease payment or a rent payment.

21 Q. How long have you -- how can PanOptis hold the patents
22 that are invented by others?

23 A. Again, as I referred to a patent as a property right,
24 those can be transferred to others. Think about a land right
25 or a mineral right. You can transfer that to others for their

1 use.

2 Q. Do Panasonic, LG, and Ericsson have an economic interest
3 in Panasonic -- in PanOptis?

4 A. Yes, they do.

5 Q. How significant is that economic interest?

6 A. They actually receive a substantial portion of our
7 revenues.

8 Q. How long have you spent in the cellular licensing
9 industry?

10 A. Approximately twenty years.

11 Q. Are there any other companies that perform the same role
12 as PanOptis performs?

13 A. Yes, there are. There is companies like Via Licensing
14 and MPEG LA that are actually set up to acquire patents and
15 patent rights from companies that were innovators in their
16 field, and then those companies actually license those patents
17 to companies in the industry that use the underlying
18 technologies.

19 Q. Are you familiar with similar business structures that
20 Apple has used in the past in this industry?

21 A. Yes.

22 Q. Has Apple invested in companies like PanOptis in the
23 past?

24 A. Yes, it has.

25 Q. Can you give us an example?

1 A. There's a company called Rockstar.

2 Q. What is the history of Rockstar?

3 A. Rockstar was formed when Apple, along with a consortium
4 of other companies, actually acquired a large number of
5 patents from a company called Nortel. They actually set up
6 Rockstar to own those patents, and then Rockstar licensed
7 these patents to the industry.

8 Q. And Apple retained an interest in Rockstar?

9 A. Yes, they did.

10 Q. And is that the same model -- how does that relate to the
11 model of PanOptis?

12 A. It's very similar to the model. Rockstar owns patents
13 from the original innovator, in this case Nortel, and then
14 licenses those patents to the industry.

15 Q. As part of your job, do you follow important events
16 within the cellular industry?

17 A. Yes, I do.

18 Q. From a business standpoint, what is the brief history of
19 cellular technology?

20 MR. SHEASBY: Mr. Huynh, can we have slide 4,
21 please?

22 THE WITNESS: Well, if you look at this slide, the
23 left-hand side, cellular actually got its start in the early
24 1980s. And for much of the first few decades, there wasn't a
25 lot of data being transmitted across those cellular networks.

1 In the mid 2000s, a group of engineers and companies got
2 together and recognized that there was going to be a massive
3 amount of data that was going to be transmitted across the
4 next cellular network. They ended up meeting to address that
5 by building the next network called LTE, or long-term
6 evolution. It's really the backbone of all cellular
7 communication traffic.

8 Q. (BY MR. SHEASBY) Are Samsung, LG, and Panasonic the only
9 entities that helped create LTE?

10 A. No, they're not.

11 Q. Did they play a significant role in the creation of LTE?

12 A. Yes, they did.

13 Q. Do you have an understanding of what caused the massive
14 increase in data?

15 A. It was really the expectation -- yes, I do.

16 Q. What is that?

17 A. It was really the future smartphone revolution that was
18 starting to come about in the middle of the 2000s.

19 Q. In what specifically does this case relate to?

20 A. This case relates to LTE communications and specifically
21 the patents that LG, Samsung, and Panasonic invented and
22 contributed to the industry and are essential to the LTE
23 standard.

24 Q. Have PanOptis contributors commercialized LTE cellular
25 technology?

1 A. Yes, they have.

2 Q. Can you give me some examples?

3 A. Sure. LG and Samsung have both launched cellular
4 communication devices around LTE technology.

5 Q. And when did they do that?

6 A. They did that about -- in 2010 for Samsung, and LG was
7 shortly thereafter.

8 Q. And how does that relate to Apple's launch of LTE?

9 A. It was approximately one to two years before Apple
10 actually launched its cell phone for LTE in late 2012.

11 Q. Are you familiar with the scale of investment made by
12 Panasonic, LG, and Samsung in research?

13 A. Yes, I am.

14 Q. Can you give us an example of that?

15 A. Well, in 2008, which was at the time that the standards
16 were being created, the combined R and D spend for those three
17 companies was approximately \$14 billion.

18 Q. As part of your job, have you gained an understanding of
19 the importance of LTE from a business standpoint?

20 THE COURT: Mr. Sheasby, could you slow down as you
21 read those questions?

22 MR. SHEASBY: Yes, Your Honor.

23 THE COURT: Please do.

24 Q. (BY MR. SHEASBY) As part of your job, have you gained an
25 understanding of the importance of LTE from a business

1 standpoint?

2 A. Yes, I have. It's very important.

3 Q. Can you give us an example of that?

4 A. Sure. In 2020, you think about what we do with our
5 phones today. We watch YouTube, we download Netflix, watch
6 streaming movies, we share photos. All of that has to go over
7 the cellular networks. So in that time frame, there was 43
8 billion megabytes of data being transmitted across those
9 networks each and every day.

10 Q. How do innovators address this massive data problem?

11 A. Well, they've recognized that even a small incremental
12 improvement in the transmission across the networks would lead
13 to a large benefit. Think about the size of the U.S. economy.
14 It's a very large number. An incremental improvement in that
15 is a large number.

16 Q. What is the dominant cellular network as of 2020?

17 A. It's LTE.

18 Q. And what percentage of the cellular technology do you
19 realize in LTE?

20 A. 83 percent of all data communication traffic is done
21 through LTE.

22 Q. Do PanOptis contributors continue to remain ahead of
23 Apple in cellular technology?

24 A. Yes, they do.

25 Q. Can you give us some examples?

1 A. Yes. Well, you've heard of 5G and Panasonic and Ericsson
2 have both launched 5G networks. Samsung and LG -- Samsung has
3 launched 5G phones into the marketplace.

4 Q. During the damages period in this case, did Apple have a
5 5G phone?

6 A. No, it did not.

7 MR. SHEASBY: Mr. Huynh, can we have the
8 demonstrative that Mr. Mueller used in my slide deck, please,
9 with the phones? I believe it's the next slide.

10 Q. (BY MR. SHEASBY) Were you present in opening when
11 Apple's lead counsel showed this slide?

12 A. Yes, I was.

13 Q. From a business standpoint, is LTE the same in each of
14 these phones?

15 A. No, it's not.

16 Q. Why do you say that?

17 A. Well, if you look at the phone on the left, the Doro
18 phone, that's actually what we call a feature phone within the
19 industry. Those were available in the late 1990s, early
20 2000s. And it -- the BLU phone as well, both of those phones
21 on the left have one-tenth of the ability to transmit data
22 compared to the iPhone 11.

23 Q. Does the Doro allow for the downloading of applications
24 or videos?

25 A. No, it does not. It doesn't allow for either of those

1 download capabilities.

2 Q. Do you believe this is a fair comparison to make between
3 the Doro and BLU phone and a phone such as the iPhone 11 Pro
4 Max?

5 A. No, I do no.

6 Q. Do you have any personal experience at the companies you
7 work with with the importance of high speed bandwidth to phone
8 manufacturers?

9 A. Yes, I do.

10 Q. Can you give us some examples?

11 A. Sure. In -- while I was at Motorola, they actually set
12 up its own cellular service where they acquired air time and
13 bandwidth from major cellular communications providers,
14 network providers, and packaged that together to be able to
15 sell premier service to its customers.

16 And then while I was at Google, they actually set up the
17 same process where they acquired network capacity to be able
18 to provide high class service to its customers. They
19 purchased that capacity from the network suppliers, and it's
20 called Google Fox.

21 Q. How did the smartphone industry expand while you were at
22 Motorola?

23 A. Well, the smartphone industry actually started in the
24 early 2000s. And then as the data capacity became available,
25 it attracted a lot of new entrants into the marketplace.

1 Apple, a number of other computer companies, and a number of
2 Chinese smartphone manufacturers decided to enter the market.
3 They didn't really have much involvement in developing the
4 underlying standards around LTE connectivity, and then they
5 ended up developing products and taking market share from the
6 innovators.

7 Q. When did Samsung release its first cell phone?

8 A. In 1988.

9 Q. When did Apple release its first cell phone?

10 A. In 2007.

11 Q. When LG, Samsung, and Panasonic were helping to build
12 LTE, what cellular telecommunications technology was Apple
13 offering?

14 A. It was 2G GSM technology.

15 Q. Have you come to understand the role that Apple played in
16 the creation of LTE?

17 A. Yes, I have.

18 Q. What was Apple's role?

19 A. It had no meaningful role at all in the creation of LTE.

20 Q. Mr. Mueller at break referred to -- in his opening
21 referred to something he called 5G. Do you remember that?

22 A. Yes.

23 Q. What is the relationship between LTE and 5G?

24 A. Well -- between LTE and 5G?

25 Q. Yes.

1 A. Well, 5G is really a form of LTE.

2 Q. Do PanOptis contributors continue to remain ahead of
3 Apple in cellular technology?

4 A. Yes, they do.

5 Q. When you said that LTE is a form of 5G, can you explain
6 that a bit more?

7 A. Well, excuse me. The LTE is a form of -- 5G.

8 Q. You said 5G is a form of LTE. Can you explain that a
9 little bit more?

10 A. Sure. It's long-term evolution. So basically with
11 long-term evolution, 5G was really built on top of 4G. 4G, or
12 LTE, is the underlying technology that really supports the
13 ability for 5G transmission.

14 Q. All right.

15 MR. SHEASBY: Can we have PX 9.7, Mr. Huynh? Slide
16 7. One more.

17 Q. (BY MR. SHEASBY) Did the original owners of the patents
18 inform the industry about the importance of them?

19 A. Yes, they did.

20 Q. How did they do that?

21 A. They did that through a declaration process and -- when
22 they informed the industry. That declaration process is a
23 process where they declare their patents essential to a
24 particular standard. They do that to a body called ETSI. And
25 in that declaration process, they end up informing people that

1 they're willing -- that they were willing to grant irrevocable
2 licenses with the expectation that they would receive a fair,
3 reasonable, and nondiscriminatory rate.

4 Q. Did these innovators commit to provide licenses to their
5 patents?

6 A. Yes, they did.

7 Q. On what terms did they agree to provide licenses to these
8 patents?

9 A. On fair, reasonable, and nondiscriminatory terms.

10 Q. Did PanOptis do anything to identify the importance of
11 these patents?

12 A. Yes. In fact, PanOptis did a couple of things. First,
13 they ended up actually checking the essentiality of these
14 patents to verify in fact that they were truly essential. And
15 then they reaffirmed those commitments by saying it was
16 prepared and -- declared to the standards body that it was
17 prepared to grant irrevocable licenses with the expectation
18 that it would be fairly rewarded.

19 Q. How does PanOptis manage its relationship with ETSI?

20 A. We actually have a gentleman on staff named James Warden,
21 who is a technologist by trade. He's actually participated in
22 the standards bodies' meetings, went and helped form the
23 standard through his decades of experience at Motorola and
24 BlackBerry.

25 Q. Has PanOptis approached Apple about licensing its

1 patents?

2 A. Yes, we have.

3 Q. When was the first event?

4 A. The first event was in January of 2017.

5 Q. And what did that involve?

6 A. That involved a letter that then Tom Miller, who was the
7 head of licensing for PanOptis, sent a letter to Bruce Sewall,
8 the general counsel of Apple.

9 Q. As part of your role as CEO of PanOptis, did you
10 familiarize yourself with the Apple negotiations?

11 A. Yes, I did.

12 Q. Can you give me -- was there a meeting in February?

13 A. Yes, there was.

14 Q. What happened at that meeting?

15 A. At that meeting, Tom Miller, along with Ray Warren, who
16 was the director of licensing at PanOptis, ended up -- ended
17 up informing Apple that they were still willing to enter into
18 licenses and discuss their SEP holdings.

19 Q. What was Apple's position on whether it needed PanOptis'
20 patents?

21 A. They informed us that they did not want to take a
22 license.

23 Q. Did they take a position on whether the patents were
24 infringed and invalid?

25 A. Yes. They ultimately determined from their perspective

1 that they claimed that they were invalid and that the patents
2 were not infringed.

3 Q. And they said that for all of PanOptis' patents?

4 A. Yes, they did.

5 Q. How many times did they say that in your estimation?

6 A. Multiple occasions, at least three times that I can
7 recall.

8 Q. To you directly?

9 A. To me directly, they said it twice.

10 Q. Did you make offers to Apple?

11 A. Yes, we did.

12 Q. Did the offers change over time?

13 A. Yes, the offers did change over time.

14 Q. Why did they change?

15 A. They changed over time because we learned more
16 information about this portfolio, number one. We had patents
17 that were actually found to be valid and essential to the
18 standard.

19 We actually ended up doing additional work on our patents
20 to determine how many patents that we had that were really
21 applicable to these discussions and were absolutely essential
22 to the standard, and then we had some information from Apple
23 about some claimed licenses that they had that ended up not to
24 be true.

25 Q. Apple claimed they had a license to some of your patents?

1 A. Yes, they did.

2 Q. And what was the ultimate conclusion?

3 A. That that was incorrect.

4 Q. When you were making offers to Apple, did they dispute
5 infringement and validity of your patents?

6 A. Yes, they did.

7 Q. And after they disputed validity and infringement of your
8 patents, did Apple make an offer?

9 A. Yes, they did.

10 Q. So to be clear, Apple said none of PanOptis' patents are
11 valid or infringed and --

12 MS. SMITH: Your Honor, may we approach?

13 THE COURT: Approach the bench.

14 (The following was had outside the hearing of the
15 jury.)

16 MS. SMITH: I gave Mr. Sheasby a little leeway on
17 saying that the communications that they're not valid, they're
18 not infringed. But he is going on and on about infringement
19 and invalidity, which you've said, Your Honor, is not part of
20 this case.

21 MR. SHEASBY: Your Honor, I'm not talking about
22 these specific patents. I'm talking about the negotiations.
23 I laid the foundation that during these negotiations, they
24 repeatedly said PanOptis' patents were invalid and not
25 infringed.

1 The door has been opened to the negotiation. I was very
2 clear about that. I'm not asking about what is happening in
3 the lawsuit. I am talking specifically about the negotiations
4 that occurred.

5 THE COURT: Well, you mentioned it enough. You
6 don't need to dwell on infringement or invalidity going
7 forward.

8 MR. SHEASBY: Sure.

9 THE COURT: All right.

10 MS. SMITH: Thank you, Your Honor.

11 (The following was had in the presence and hearing
12 of the jury.)

13 THE COURT: Let's proceed.

14 Q. (BY MR. SHEASBY) During this time with PanOptis, did
15 Apple make offering offers to PanOptis?

16 A. Yes.

17 Q. The first offer that Apple -- that PanOptis made to Apple
18 in 2017, about how much was that for in terms of past damages
19 in the U.S.?

20 A. Approximately \$500 million.

21 Q. When you made the decision to initiate this lawsuit
22 against Apple, who determined what patents to use?

23 A. We had a team of technologists and patent lawyers on
24 staff that determined which patents to use.

25 Q. Who's going to teach the jury about the patents?

1 A. We actually have Professors Mahon and Madisetti, who are
2 the world experts in this field to help teach the jury.

3 Q. Did you sit with them?

4 A. Yes, I did.

5 Q. Now, are you able to read and understand the patents on
6 your own?

7 A. No, not on my own. It's very technical documents.

8 Q. How did you learn them?

9 A. I actually spent time with Professors Mahon and Madisetti
10 and participated in Zoom calls, phone calls, and in-person
11 meetings to try to understand the underlying technology in the
12 patents.

13 Q. Did LG, Panasonic, and Samsung provide information on
14 these five patents when PanOptis took responsibility for
15 protecting them?

16 A. Yes, they did.

17 Q. What did LG and Panasonic do?

18 A. LG and Panasonic actually supplied documents when they
19 transferred the patents to us that designated whether or not
20 the patents were actually essential to the -- declared
21 essential to the LTE standard. It wasn't every patent, but it
22 was a subset of the patents they transferred to us.

23 And then they actually went a further step and identified
24 specified patents and, again, a subset of those declared
25 patents that they confirmed were actually essential and had

1 claim charts that they believed were essential to the standard
2 for those specific patents.

3 Q. Ericsson check the analysis of LG and Panasonic?

4 A. Yes, it did in that process.

5 Q. And did Samsung identify the Patents-in-Suit?

6 A. Yes, it did.

7 Q. How did it do that?

8 A. In our contract with Samsung, they actually provided a
9 list of patents as well and identified a certain subset of
10 those patents that were essential to the standards.

11 Q. Does PanOptis use internal or external experts to
12 determine the speed increase attributable to the patents?

13 A. In cases like these, we use external experts. They are
14 the most appropriate.

15 Q. Does PanOptis use internal or external experts to set
16 FRAND damages in cases like these?

17 A. Again, in cases like these, we use external experts.
18 They are the most appropriate.

19 Q. Have you contacted Apple since filing suit?

20 A. Yes, we have.

21 Q. What did Apple respond?

22 A. Well, they initially in their response said that they
23 didn't infringe the patents, that they believed them to be
24 invalid, and then said they welcomed to come to court.

25 Q. When you -- are you familiar with how much money PanOptis

1 has invested in its business today?

2 A. Yes, I am.

3 Q. How much?

4 A. It is approximately \$450 million through August of 2020
5 with a substantial portion of that going back to the original
6 innovating companies.

7 Q. Thank you, Mr. Blasius.

8 MR. SHEASBY: Your Honor, I pass the witness.

9 THE COURT: Cross-examination by the Defendant?

10 MS. SMITH: Yes, Your Honor.

11 THE COURT: What are you doing, Mr. Sheasby?

12 MR. SHEASBY: I was handing the binders to
13 Mr. Blasius.

14 THE COURT: All right. Proceed. I just would like
15 to know what you're doing and what you've got in your hand
16 before you start walking around the courtroom.

17 MR. SHEASBY: I understand, Your Honor.

18 THE COURT: All right. Let's proceed, Ms. Smith.

19 MS. SMITH: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. SMITH:

22 Q. Good afternoon, Mr. Blasius.

23 A. Good afternoon.

24 Q. My name is Melissa Smith, and I represent Apple. Nice to
25 meet you.

1 A. Nice to meet you.

2 Q. Mr. Blasius, you were here when the Judge read his
3 preliminary instructions to the jury. Correct? You were
4 seated at that table?

5 A. Yes.

6 Q. All right. You understand that the issue for the jury
7 here is to decide what a FRAND royalty would be for
8 Plaintiffs' five patents. Is that correct?

9 A. Yes.

10 MS. SMITH: Your Honor, may I approach this flip
11 chart?

12 THE COURT: You may.

13 Q. (BY MS. SMITH) And as you heard I believe from both
14 sides in opening, FRAND stands for fair, reasonable, and
15 nondiscriminatory, and you have no dispute with that, do you?

16 A. No, I do not.

17 Q. All right. And each of the five patents here are
18 committed to be licensed on FRAND terms and conditions.

19 A. That's correct.

20 Q. And Samsung, Panasonic, and LG each committed that they
21 license the five Patents-in-Suit on FRAND terms. Correct?

22 A. Correct.

23 Q. And then following along when Plaintiffs acquired the
24 five patents at issue here, they also made that FRAND
25 commitment. Is that correct?

1 A. Yes.

2 Q. And that FRAND commitment is an irrevocable commitment.
3 You can't take it back, can you?

4 A. Correct.

5 Q. Now, Mr. Blasius, you understand that the Plaintiffs here
6 don't get to come to court -- you don't get to come to court
7 for this trial and break those FRAND commitments. You
8 understand that?

9 A. Yes.

10 Q. Okay. You're bound to them?

11 A. Yes, we are.

12 Q. And you take those commitments seriously.

13 A. Yes.

14 Q. And you understand the jurors here can hold you to those
15 commitments.

16 A. Yes.

17 Q. Okay. You were also here when Judge Gilstrap gave his
18 preliminary instructions and talked about this case not being
19 punitive. Did you hear the Judge say that?

20 A. Yes.

21 Q. And so you'd agree that this case is not a case where
22 you're asking the jury to punish Apple. Is that correct?

23 A. Correct.

24 Q. You'd agree the jury's task is not the punish Apple.
25 Correct?

1 A. Correct.

2 Q. Because the jury's only task is to determine what's fair,
3 reasonable, and nondiscriminatory. Correct?

4 A. Yes, correct.

5 Q. Okay. So if somebody came to you and said, you know, I
6 want to punish Apple with a royalty rate that's higher than
7 FRAND because Apple is a successful company, you'd say that
8 would be the wrong thing to do. Correct?

9 A. Correct.

10 Q. And Samsung, LG, and Panasonic, they are all big
11 companies, aren't they, sir?

12 A. Yes.

13 Q. And so if somebody was to say, well, you know what? I
14 think I want to discriminate against Apple because it's a big
15 company, that would be the wrong thing to do, wouldn't it,
16 sir?

17 A. You could characterize it that way.

18 Q. Okay. Now, you visited with your attorney about the
19 relationship between the Plaintiffs and Panasonic, LG, and
20 Samsung. Now, Panasonic, LG, and Samsung, they've got some
21 continuing arrangements with the Plaintiffs, do they not?

22 A. Yes, that's correct.

23 Q. They're continuing contractual arrangements.

24 A. Yes.

25 Q. So Plaintiffs have an ongoing obligation to share their

1 licensing revenues with -- with LG and Panasonic. Is that
2 correct?

3 A. Correct.

4 Q. And so LG and Panasonic will receive a portion of any
5 damages awarded in this case. That would be Optis' revenue.
6 Correct?

7 A. Yes.

8 Q. So LG and Panasonic have a direct financial interest in
9 what the jurors decide here. Is that correct?

10 A. Yes.

11 Q. And LG and Panasonic sell products in the marketplace
12 along with Apple. Correct?

13 A. Can you define products?

14 Q. Electronic products?

15 A. Electronic products?

16 Q. Yes.

17 A. Yes.

18 Q. All right. And Samsung certainly sells electronic
19 products and handsets along with Apple in the marketplace. Is
20 that correct?

21 A. That's correct.

22 Q. The truth is actually Samsung sells more phones than
23 Apple. Correct?

24 A. I don't know.

25 Q. All right. Well, let's go back in 2012 first. Back in

1 2012, do you know whether or not Samsung was selling a lot
2 more phones than Apple?

3 A. I don't recall the specific number at that time.

4 Q. Okay.

5 MS. SMITH: Mr. Lee, if we could take a look at the
6 Defense demonstrative, the Gartner exhibit, which is at tab 10
7 please.

8 Q. (BY MS. SMITH) Mr. Blasius, are you familiar with
9 Gartner Marketing Research as a member of the licensing
10 community?

11 MR. SHEASBY: Your Honor, I object. This is not in
12 evidence. This was not preadmitted. It's a demonstrative.
13 Counsel can refresh Mr. Blasius's recollection with this
14 document, but it shouldn't be published to the jury.

15 MS. SMITH: Your Honor, we didn't have an agreement.
16 I'm not entering it into evidence as an exhibit. It is a
17 demonstrative, and there was no agreement to exchange
18 demonstratives. So this can't be considered some type of a
19 surprise, and it's marketing research. He's been in marketing
20 for 25 years. I assume he's familiar with it.

21 THE COURT: If he has personal knowledge, he can
22 testify within his personal knowledge. Overruled. If he
23 doesn't have personal knowledge, he's not going to speculate
24 about what it is.

25 Let's proceed.

1 MS. SMITH: Of course.

2 Q. (BY MS. SMITH) Mr. Blasius, you have been -- how long
3 have you been doing licensing?

4 A. Approximately twenty years.

5 Q. All right. And you keep track of what's going on in the
6 market with various electronics companies that you're familiar
7 with--Samsung, Apple, LG, Panasonic, companies like that?

8 A. Yes.

9 Q. I'm going to show you what has been put on the screen.

10 MS. SMITH: And if we could go to table 1, Mr. Lee.
11 Thank you. And if we could cull out -- highlight the Samsung
12 and Apple.

13 MR. SHEASBY: Your Honor, I continue to object.
14 This is not evidence. The witness can be refreshed by looking
15 at his binder. We don't publish non-evidence to jurors.

16 MS. SMITH: I'm going to ask if he's familiar with
17 these numbers, if these look appropriate based upon the
18 experience that he just testified to. It's a demonstrative.

19 THE COURT: If he has personal knowledge, he can
20 testify to it. If he doesn't know this level of detail, he'll
21 have to say he doesn't know this level of detail.

22 Let's proceed.

23 Q. (BY MS. SMITH) Sir, do you have any recollection of the
24 number of Samsung handsets sold back in 2012 versus the number
25 of Apple handsets sold back in 2012?

1 A. I don't recall the specific numbers.

2 Q. So I'll make my question a little more broad. Do you
3 recall that Samsung, not asking you for specific numbers, do
4 you recall that Samsung sold more phones than Apple in 2012,
5 give or take 50,000 or 70,000?

6 A. I don't recall the specific numbers.

7 Q. Okay. Thank you, sir.

8 MS. SMITH: Mr. Lee, you can take that down.

9 Q. (BY MS. SMITH) Now, we've talked about that ongoing
10 revenue relationship between PanOptis and LG and Panasonic. I
11 want to talk about Samsung.

12 Now, Samsung approached PanOptis about a business deal, I
13 recall you telling Mr. Sheasby. Is that correct?

14 A. Yes.

15 Q. And Samsung approached PanOptis and proposed that it
16 would pay for the acquisition of Unwired Planet. Is that
17 correct?

18 A. That's incorrect.

19 Q. All right. Well, as part of the deal, Samsung
20 transferred patents to Plaintiffs, including the 774. Can we
21 agree on that?

22 A. That's correct.

23 Q. Okay. Thank you, sir.

24 MS. SMITH: Now, Mr. Lee, if you could put up DDX
25 53.4.

1 Q. (BY MS. SMITH) I've been stumbling over some of the
2 entities. There are five Plaintiffs in this case. Correct,
3 Mr. Blasius?

4 A. Yes.

5 Q. So we've got PanOptis Management up top here or kind of
6 in the middle of the screen. Is that correct?

7 A. Yes.

8 Q. And PanOptis Management actually doesn't own any patents.
9 Is that correct?

10 A. Correct.

11 Q. Then we've got --

12 MS. SMITH: Mr. Lee, if you'd pop up Optis Wireless
13 Technology.

14 Q. (BY MS. SMITH) Is that correct? That's one of the
15 Plaintiffs in this case?

16 A. Yes.

17 Q. And we've got Unwired Planet, LLC. Another Plaintiff in
18 this case?

19 A. Yes.

20 Q. Unwired Planet International is also a Plaintiff in this
21 case. Is that correct?

22 A. Yes.

23 Q. And then you mentioned to Mr. Sheasby, I believe, that
24 even though you are up top here as the president and CEO of
25 these five companies, you're not actually employed by any of

1 the Optis entities, but you're employed by Hilco Global. Is
2 that correct?

3 A. I wouldn't characterize it that way.

4 Q. Would you -- would it be appropriate to say you are paid
5 by Hilco Global or your compensation comes from Hilco Global?

6 A. Yes.

7 Q. And you're designated by Hilco to be the president, the
8 designated president and CEO of the Plaintiffs.

9 A. Yes.

10 Q. You're the one who authorized the filing of the lawsuit.
11 Is that correct?

12 A. Yes.

13 Q. And over on the right, I'm going to add Samsung,
14 Panasonic, and LG. Those are the entities that you would
15 agree chose to transfer their cellular patents to Plaintiff.
16 Is that correct?

17 A. Yes, that's correct.

18 Q. So is this a fair description of your corporate structure
19 for purposes of this lawsuit?

20 A. It's not entirely accurate.

21 Q. All right. Is it a fair description of the five
22 Plaintiffs in this lawsuit?

23 A. Yes.

24 Q. Thank you.

25 Now, none of the five plaintiffs that we're looking at

1 produce any actual cellular products themselves, do they?

2 A. No, they do not.

3 Q. Okay. And none of the five Plaintiffs that we see on the
4 screen sell any baseband chips, do they?

5 A. No.

6 Q. So Plaintiffs can never use a supply of products or a
7 supply of baseband chips as leverage in a patent negotiation,
8 could they?

9 A. No.

10 Q. Plaintiffs don't have their own research and development
11 departments, do they?

12 A. No.

13 Q. You did say something. I believe you said that Optis had
14 spent -- or the Panasonic-Lg entities had spent, did you say,
15 \$450 million on research and development when you were
16 visiting with Mr. Sheasby?

17 A. No, that was -- that's incorrect.

18 Q. All right. You're correct. I'm sorry, Mr. Blasius.

19 So the former owners we see here, they chose to work with
20 Optis entities to license some of their cellular patents.
21 Correct?

22 A. Correct.

23 Q. Okay. And as we've discussed, LG, Panasonic, and Samsung
24 all have some incentive for you to succeed in this case. Is
25 that correct?

1 A. That's not entirely correct.

2 Q. Okay. Well, you certainly don't dispute that LG and
3 Panasonic have an incentive for Plaintiffs to succeed here.
4 Correct?

5 A. Yes.

6 Q. Okay. Is your position that Samsung has no incentive for
7 Plaintiffs to succeed here?

8 A. Yes, that's accurate.

9 Q. Okay. Now, these companies that transferred the patents
10 to PanOptis, they could have helped you out by providing you
11 with information about performance benefits. Correct?

12 A. Could have helped us out?

13 Q. If they had information about the performance benefits of
14 the patents that they owned and gave to you, they could have
15 provided you -- nothing prevented them from providing you that
16 information. Is that correct?

17 A. I don't know.

18 Q. Did you ask for it?

19 A. Not that I recall.

20 Q. And you certainly didn't present any evidence of that
21 when you were testifying to this jury, did you?

22 A. Correct.

23 Q. Now, Plaintiffs are seeking a royalty of \$4.22 per iPhone
24 for the five asserted patents in this case. Is that correct?

25 A. Yes.

1 Q. And that is for a period of 18 months. Did I get that
2 right?

3 A. Correct.

4 Q. So at that per unit rate that the Plaintiffs are
5 requesting, that could add up to far more than a half billion.
6 It could be billions. Is that correct?

7 A. It depends on the time period.

8 Q. Well, to be clear, the \$506 million that you're asking
9 the jury for is just for the time period between February of
10 2019 through August of 2020. Is that correct?

11 A. Yes.

12 Q. And Plaintiffs are going to ask this jury for that same
13 \$4.22 for an iPhone period from August '20 beyond through the
14 expiration of the patents in a running royalty. Isn't that
15 correct?

16 A. That's correct.

17 Q. And these five patents aren't going to expire for many,
18 many years. Correct?

19 A. That's correct.

20 Q. So what you're asking for the jury for is actually
21 billions of dollars, sir. Is that correct?

22 MR. SHEASBY: Your Honor, I object. As a matter of
23 law, running royalty is not decided by this jury. On a
24 royalty basis --

25 THE COURT: I can't hear you, Mr. Sheasby.

1 MR. SHEASBY: Your Honor, I object. This is a
2 mischaracterization of the law. Running royalty applicability
3 of damages is decided by the Court, not the jury, and counsel
4 should not be mischaracterizing the role between the jury and
5 the Court.

6 MS. SMITH: Your Honor, I believe this plaintiff
7 wants an option, a running royalty option for this jury to
8 decide, and that's what I'm addressing now. If they're
9 withdrawing that, I'll withdraw my questions.

10 MR. SHEASBY: Your Honor, the problem is the
11 suggestion that the jury will decide the future royalty as
12 opposed to the Court.

13 THE COURT: Ms. Smith, this is the corporate
14 representative of the Plaintiff. You can ask him if the
15 corporation is seeking a running royalty, whether it's from
16 the jury or some other source. You don't need to go beyond
17 are they or are they not seeking that running royalty over the
18 life of the remaining life of the patents.

19 MS. SMITH: Understood, Your Honor.

20 THE COURT: All right. Let's proceed.

21 Q. (BY MS. SMITH) So, Mr. Blasius, you're seeking -- in
22 addition to the half billion, you're also seeking a running
23 royalty going forward through the life of the patents. Is
24 that correct?

25 A. I wouldn't characterize it that way. We're seeking a

1 running royalty.

2 Q. Now, working just with that \$506 million or half-billion
3 dollar number, you'd agree that Samsung, Panasonic, and LG as
4 competitors of Apple, they wouldn't be too upset if Apple had
5 to pay those royalties, would they?

6 A. I don't know what their position would be.

7 Q. Well, do you think Samsung, Panasonic, and LG might sell
8 more of their own products if Apple is having to pay a half
9 billion dollars out in royalties like that?

10 MR. SHEASBY: Your Honor, I object. This is a
11 violation of Ericsson. This is completely contrary to the
12 hypothetical negotiation. It has nothing to do with
13 hypothetical negotiation in this case. Ericsson is directly
14 on point. The question should be stricken.

15 THE COURT: It calls for speculation. This witness
16 can't testify about what Samsung, Panasonic, or LG might
17 think. I'll sustain the objection.

18 MS. SMITH: Understood, Your Honor. And I'm
19 actually going to move along now, and I need to seal the
20 courtroom, Your Honor, if you'll allow me, because I'm going
21 to talk about Plaintiffs' confidential information.

22 THE COURT: That's fine. Based on counsel's
23 request, I'll order the courtroom sealed.

24 Those present not subject to the protective order that's
25 been entered in this case should excuse themselves until the

1 courtroom's reopened and unsealed.

2 MS. SMITH: At the same time, Your Honor, may I
3 approach and put a board on the easel, please?

4 THE COURT: You may.

5 MS. SMITH: Thank you.

6 THE COURT: Let's go off the record a minute.

7 (A discussion was held off the record.)

8 (The courtroom was closed.)

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THE COURT: You may step down, Mr. Blasius.

I'll order the courtroom unsealed at this time. I will ask the courtroom security officer to invite the public to return.

MR. SHEASBY: Your Honor, may I approach and retrieve the binders?

THE COURT: Yes, you may.

MS. SMITH: Your Honor, may I approach to take this down?

THE COURT: Yes, please do.

MS. SMITH: Thank you. And I'll also flip that over.

May I approach?

THE COURT: You may.

MS. SMITH: Thank you.

THE COURT: Plaintiff, call your next witness.

MR. SHEASBY: Your Honor, Plaintiffs call Professor Mark Mahon.

THE COURT: All right. Professor Mahon, if you'll come forward and be sworn, please.

1 MR. SHEASBY: Your Honor, may I approach and hand
2 binders?

3 THE COURT: You may distribute binders.

4 (Whereupon, the oath was administered by the Clerk.)

5 THE COURT: Please come around and have a seat on
6 the witness stand.

7 All right, Mr. Sheasby. You may proceed with direct
8 examination.

9 MR. SHEASBY: Your Honor, with your permission, may
10 Professor Mahon use a remote to advance the demonstratives
11 that he's prepared.

12 THE COURT: That's not a problem. Hand it to the
13 Court Security Officer and he will hand it to the witness.

14 All right. Let's proceed with direct examination.

15 MARK MAHON, PhD,
16 testified under oath as follows:

17 DIRECT EXAMINATION

18 BY MR. SHEASBY:

19 Q. Good afternoon, Professor.

20 A. Good afternoon.

21 Q. Can you please introduce yourself?

22 A. Yes. My name is Mark Mahon. I'm employed by Penn State
23 University as a professor in the school of electrical
24 engineering and computer science.

25 Q. Can you tell us a little bit about yourself?

1 A. Yes. I'm married. We're going to be celebrating their
2 33rd wedding anniversary are in two months. I have two
3 daughters. My oldest daughter is a physician associate in
4 Milwaukee, and she just had our first grandchild; and my
5 younger daughter works as a healthcare consultant in
6 Philadelphia.

7 Q. What is your education background?

8 A. I received my Master of Science and PhD from Penn State
9 University. My PhD was in acoustics. My Master of Science
10 was in electrical engineering. Acoustics is a combination of
11 electrical engineering and physics. For example, I took the
12 same communications theory, signal processing theory, and
13 antenna theory courses that an electrical engineering student
14 would take in addition to additional physics classes.

15 I was also a research faculty member for 25 years at Penn
16 State University, and currently I am a professor for the last
17 six years teaching graduate and undergraduate classes in
18 wireless and mobile networks.

19 Q. Altogether, how long have you been working in the
20 cellular telecommunications field?

21 A. I've been working in the cellular telecommunications area
22 for 33 years. Right out of college, I was recruited by the
23 Central Intelligence Agency to work on classified programs in
24 the area of cellular comms--communications.

25 I then went, as I said, to work for the Applied Research

1 Lab at Penn State University for 25 years. During that time,
2 I worked on 2G, 2 and a half G, 3G, and LTE systems.

3 Now, I also did classified work for the Department of
4 Defense, and I can't tell you much about that, but one thing I
5 can tell you about is the National Reconnaissance Office had a
6 problem in the late '90s, and they were being told the problem
7 could not be solved. I came up with a solution. I built a
8 system, and we took it out to the desert and we tested it, and
9 it worked. And they were so pleased with the results, they
10 renamed the program Desert Gold. That led to \$12 million
11 additional research funding over the next 15 years.

12 Q. Can you tell us a little bit more about Desert Gold?

13 A. Yes. Desert Gold -- the result of Desert Gold we used to
14 develop equipment that was then deployed to Iraq and
15 Afghanistan to help protect our troops against improvised
16 explosive devices. IEDs can be set off by wireless signals,
17 including cellular signals, and our equipment helped protect
18 our troops in the theater.

19 Q. Have you ever received commendations for your work?

20 A. Yes, I have. The National Reconnaissance Office awarded
21 me two commendation letters.

22 Q. I would like you to show those to the jury.

23 MR. SHEASBY: Would you please do so?

24 Q. (BY MR. SHEASBY) What are these commendations for?

25 A. These two commendation letters are from the National

1 Reconnaissance Office for my work in the telecommunications
2 area.

3 Q. And when it says "Mark is the genius behind the Bella
4 software algorithms," is that you?

5 A. That is me.

6 Q. Are you being compensated for your work in this case?

7 A. Yes I am, sir; at \$400 an hour, which is my standard
8 consulting rate for this type of work.

9 Q. About how many hours have you worked on this case?

10 A. Approximately 550.

11 Q. What is your compensation based on?

12 A. The actual hours I work on the case.

13 Q. Have you ever worked for PanOptis before this litigation?

14 A. I have not.

15 Q. Have you ever investigated Apple's conduct before this
16 litigation?

17 A. I was involved in one other case against Apple.

18 MR. SHEASBY: Your Honor, we would like to offer
19 Professor Mahon as an expert on cellular telecommunication
20 systems.

21 THE COURT: Is there an objection?

22 MR. MUELLER: No objection Your Honor.

23 THE COURT: Without objection, the Court will
24 recognize this witness.

25 Let's continue.

1 MR. SHEASBY: Thank you, Your Honor.

2 Q. (BY MR. SHEASBY) Professor, what will you testify about
3 today?

4 A. I'm going to be testifying about the technical value to
5 Apple for two patents, Patent No. 9,001,774, which I would
6 refer to as the '774 Patent today, and Patent No. 8,385,284,
7 which I will refer to as the '284 Patent.

8 Q. What technology area are the '774 and '284 patents
9 related to?

10 A. High speed LTE communications.

11 Q. And what is LTE?

12 A. LTE stands for long term evolution. A group of leading
13 technology companies in the world who got together to create
14 the next generation network, including LG, Samsung, Panasonic,
15 and Ericsson, and they wanted to build a network that could
16 evolve over time by increasing its capabilities to deliver
17 high-speed data and massive amounts of data.

18 Q. What materials did you consider as part of your analysis?

19 A. I considered many materials that I list here on the
20 slide. Most importantly, what I'm going to talk about today
21 is the source code--that is, what actually is running on the
22 phones and devices--and also testing data. The source code
23 tells me what the device could do; the testing data tells me
24 what the device actually does.

25 Q. What Apple products use the '774 and '284 Patent

1 technology?

2 A. All Apple products that include the LTE functionality.
3 On this slide I show you the iPhones and iPads offered to the
4 public since 2012 and iWatches offered to the public since
5 2015. All these devices, based on my analysis, operate in the
6 same way in relevant part.

7 MR. MUELLER: And, Your Honor, I just want to move
8 to strike to the extent there is any suggestion that the
9 period at issue before the jury is anything other than the
10 period from 2019 to 2020, as instructed by Your Honor.

11 THE COURT: You can certainly clarify that on cross
12 examination. He's not precluded from offering whatever
13 testimony he wants to.

14 MR. MUELLER: Thank you, Your Honor.

15 THE COURT: That request is overruled. You'll deal
16 with it on cross.

17 Let's continue, Mr. Sheasby.

18 Q. (BY MR. SHEASBY) Did you analyze source code as part of
19 your investigation?

20 A. Yes, I did, sir.

21 Q. Have you seen any evidence that Apple advertises the
22 speed of its LTE products?

23 A. Yes, I have. So this is a great example of how the
24 network designers for LTE understood that while their network
25 evolved over time, device manufacturers' devices would evolve

1 over time to be able to get faster and better. So on this
2 slide I show an example of how the iPhone 5, first release for
3 LTE functionality, has evolved through the iPhone 11. And
4 Apple advertised in the beginning iPhone 5's blazing fast LTE
5 speeds, and you can see on the right I highlight that their
6 advertising for the iPhone 11 gigabit class LTE. That's
7 really, really fast.

8 Q. And this is Exhibit PX 2129?

9 A. That is correct.

10 Q. What claim of the '774 Patent is used in Apple's LTE
11 products?

12 A. So claim 6 on this slide, on the left I show you the text
13 from claim 6. The '774 Patent was invented by a gentleman by
14 the name of Dr. Farooq Khan of Samsung.

15 MR. SHEASBY: Can we have the next demonstrative,
16 please, Mr. Huynh?

17 Q. (BY MR. SHEASBY) Do you recognize the document on the
18 left-hand side of the slide?

19 A. Yes, I do. That's an Apple document.

20 Q. And what is it identifying about Samsung, Panasonic, and
21 LG portfolios?

22 A. It's showing you that these three companies have a much
23 larger portfolio than the companies that are listed on the
24 right.

25 Q. Let me stop you right there. I apologize.

1 A. I'm sorry, sir.

2 Q. This is an Apple document that shows Samsung, Panasonic,
3 and LG leading in the creation of patented technology. Is
4 that correct?

5 A. That is correct.

6 Q. How does the industry view Samsung's level of innovation?

7 MR. MUELLER: I object, Your Honor; lack of
8 foundation as to who he's referring to, and hearsay. The
9 question was how does the --

10 THE COURT: I heard the question, counsel.
11 Is this not addressed in the expert's report?

12 MR. SHEASBY: It is, Your Honor.

13 THE COURT: Overruled.

14 Q. (BY MR. SHEASBY) How does the industry view Samsung's
15 level of innovation?

16 A. So industry views Samsung as a leader in innovation in
17 the area of electronics and telecommunications.

18 Q. What LTE design does the '774 Patent relate to?

19 A. Okay. So the '774 Patent is a great example again of
20 this evolutionary process. So if you remember back in the
21 day, we used to have phones and you'd pull out a whip antenna,
22 a single antenna on top of your phone, or you would have a
23 little stub on top of your phone. So your phone had a single
24 antenna. And a base station would typically talk to that
25 single antenna on that phone with one antenna so they can send

1 data back and forth.

2 THE COURT: Doctor Mahon, can you speak a little
3 slower, please?

4 THE WITNESS: Yes, Your Honor. I will try.

5 THE COURT: That would be helpful.

6 THE WITNESS: So the insight of the '774 is that
7 they realize the devices were evolving and that they would
8 have multiple antennas. So now you could have two antennas in
9 your phone talking to two antennas in the base station, so
10 theoretically you could have twice the data throughput.

11 So the '774 Patent that I show you -- the technology base
12 that I show you on this slide, if you look on the right-hand
13 side of the slide, you see a base station and I have arrows
14 pointing to two antennas. On the left I have highlighted
15 portions of schematics from Apple devices, and I have
16 highlighted an upper and lower antenna showing you the device
17 had two antennas.

18 Q. What are the challenges with multiple antenna systems?

19 A. So it sounds real easy, but it's actually pretty
20 complicated. So let's take a step back and look at this
21 slide.

22 So at the slide, again, I'm showing you a base station on
23 the right sending two waves. That's the green and the red
24 wave to the phone. Okay? So it's two data streams. Now, it
25 might seem easy that the phone can just receive those signals;

1 however, it turns out that those waves have to be synchronized
2 properly to be able to receive that data so that if they
3 interfere with each other, you don't get the double capacity.

4 Now, what makes that a problem -- so the challenge, if
5 you're sitting in your home with your phone, you're in one
6 environment and the path between the base station and your
7 phone is pretty steady. If you're walking down the street
8 carrying your phone, you're in a different environment and the
9 signals between the base station and your phone are changing
10 as you're walking. It's also reflecting off of things like
11 cars and buildings. If you're sitting in a car going 60 miles
12 an hour as a passenger and you're looking at your phone, the
13 environment is changing very fast. The base station has no
14 idea about the local environment for your phone, so the base
15 station cannot synchronize those waves so your phone can
16 receive them in the most optimal fashion.

17 Q. Can you illustrate what would happen if the waves used to
18 send data are not synchronized according to the patent?

19 A. Yes. So on this animation I have for you, a base station
20 sending two streams of data. I'm representing the data as one
21 set is red one set is green. Those little square boxes you
22 can think of as a data packet. So if the waves aren't
23 synchronized, they interfere. And you see some of those
24 packets flying off representing errors in the system, meaning
25 you're not receiving the data as fast as you could, and that's

1 because they're interfering with each other. And it's
2 possible that if there's enough interference, you could
3 actually be back to the single antenna case where your speeds
4 are as slow as using a single antenna.

5 Q. How does the '774 Patent address this challenge?

6 A. So the inventor of the '774 Patent had a great insight.
7 He realized that if you can take -- if your phone can take a
8 measurement of your local environment and send that
9 information to the base station--we're calling it a processing
10 parameter here; again, a measurement of the local environment
11 for your phone in the car, down the street, sitting in your
12 house--the base station can use that information to optimize
13 the signals, customize the signals it's sending to your phone.

14 Now, the base station could choose also to use other
15 parameters. So in addition to this, the base station is going
16 to send customized control information to your phone to tell
17 you how it did the customization of the signals. That way
18 when your phone receives that information, it can coherently
19 receive those waves and optimize the data throughput.

20 Q. What steps did you take to investigate the scale of use
21 of the '774 technology?

22 A. So what I did is I looked at the source code, so we
23 talked about that; but to actually see the use, I had to look
24 at data. So I analyzed two data sets. The first, as I show
25 on the slide on top, was taken by a team of independent

1 engineers that are experienced in the area of basically data
2 collection for wireless systems. The second set of data I
3 looked at was Apple internal data on the technology that I'm
4 going to be talking about that I can consider to be associated
5 with the '774 Patent.

6 Q. When is the '774 Patent technology used?

7 A. So referring to that top data set, that independent data
8 set, based on my analysis any time something is called --
9 something called transmission mode 4 is seen in the data, my
10 analysis shows that it's also associated with a data format
11 that is linked to the '774 Patent.

12 Now, if you remember, those two steps in the '774 Patent,
13 step 1 and step 2, I'm going to refer to that as a closed loop
14 feedback. So any time I say closed loop feedback or closed
15 loop spatial multiplexing, I'm referring to the '774
16 technology. And based on my analysis of the independent data,
17 when I see transmission mode 4, I know the '774 technology is
18 used because I saw that spatial multiplexing -- closed loop
19 spacial multiplexing was associated with it.

20 Q. How often is transmission 4 mode used in the United
21 States, according to Apple's data?

22 A. So this data was taken from actual Apple users, and you
23 notice it was sampled across the entire U.S. 650,000 cells
24 across the U.S., and you can see that, based on my analysis
25 that transmission mode 4 represents the '774 technology, it's

1 used nearly 72 percent of the time.

2 Q. Was independent testing also performed?

3 A. Yes, it was. So I worked with a team of engineers that I
4 mentioned from a company called TechPats, and they were
5 supervised by a gentleman by the name of Mr. Claude Royer who
6 has 30 years of experience. He was a director at
7 RIM--BlackBerry.

8 Q. Doctor Mahon, I'm sorry for interpreting you. Let me ask
9 you a slightly different question.

10 Did you analyze the data that was generated by TechPats?

11 A. Yes, I did.

12 Q. Did you discuss the methodology that TechPats employed in
13 some of its testing?

14 A. Yes, I did.

15 Q. Are you confident with the methodology that they used?

16 A. Yes, I am. I spent many years doing testing, and through
17 my discussions with the engineers I am very confident in their
18 technical approach.

19 Q. What was the scope of the testing?

20 A. The scope of the testing, which I show on this slide, is
21 that they did data analysis from data they collected from 2012
22 through 2019. They tested across 24 cities and, as I show,
23 eight states, against all four major LTE network carriers
24 Verizon, AT&T, T-Mobile, and Sprint.

25 THE COURT: Let me interrupt at this point.

1 Ladies and gentlemen, it's been right at two hours since
2 we've had a recess. This testimony is expected to go for some
3 considerable length. Let's take a short recess at this time.
4 We'll come back and continue with the direct examination of
5 Doctor Mahon by the Plaintiff.

6 Just simply close your notebooks and leave them in your
7 chairs, if you will. Follow all my instructions, including
8 not to discuss the case among yourselves. Use this
9 opportunity to stretch your legs and get a drink of water, and
10 we'll be back here shortly to continue.

11 The jury is excused for recess.

12 (Whereupon, the jury left the courtroom.)

13 THE COURT: While we're on recess, Doctor Mahon,
14 practice speaking slower. All right.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Court stands in recess.

17 (Brief recess.)

18 THE COURT: Be seated, please.

19 Mr. Sheasby, you are going to have to be louder so that
20 we can all hear you.

21 MR. SHEASBY: Yes, Your Honor.

22 THE COURT: My court reporter is having trouble
23 hearing you and he's much too young to have hearing problems,
24 and I'm having trouble hearing you and I'm much too young to
25 have hearing problems. You are going to have to speak up.

1 The lawyer that can't make himself heard's got a problem.

2 MR. SHEASBY: Yes, Your Honor.

3 THE COURT: And are you going to slow down for me,
4 Doctor Mahon?

5 THE WITNESS: I am, Your Honor.

6 THE COURT: Okay. Let's bring in the jury.

7 (Whereupon, the jury entered the courtroom.)

8 THE COURT: Please be seated, ladies and gentlemen.

9 We'll continue with the direct examination of the witness
10 by the Plaintiff.

11 Mr. Sheasby you may proceed.

12 MR. SHEASBY: Thank you, Your Honor.

13 Q. (BY MR. SHEASBY) Can you talk about the independent
14 testing that was performed on the use of the '774 Patent?

15 A. Yes. This slide shows you two unique testing
16 configurations that were designed by the company TechPats. On
17 the left you see something called a wave judge. So the
18 apparatus on the left was built around the wave judge. What
19 the wave judge does it's like a vacuum cleaner. It sucks up
20 all the wireless signals in a given area over a short period
21 of time. That allowed them to see what transmission modes,
22 for example, were in the area.

23 On the right you see something called Accuver. That's
24 software that you connect to the phone that's under testing to
25 see what messages and what data is being sent to the phone so

1 you can see what transmission modes and what formats -- data
2 formats are being seen by the phone. These two configurations
3 allowed me to see the data that was being shown to the devices
4 under test.

5 Q. Does it matter whether TechPats ran these tests with
6 Android phones or Apple phones?

7 A. No, because the network determines the transmission mode
8 and the data format, so the presence of either an iPhone or an
9 Android phone wouldn't change what transmission mode and data
10 format was used.

11 Q. Is the testing specific for the use of the '774 Patent?

12 A. Yes, it is. Again, based on my analysis, every time
13 based on this data we were able to see -- I was able to see
14 the relationship between something called transmission mode 4
15 and the data format associated with the '774 technology, that
16 closed loop feedback.

17 Q. What trend of usage does TechPats data show?

18 A. So over the entire data set from 2012 to 2019, it shows
19 an increasing use of TM4, the mode associated with the '774
20 technology, so over time the networks were using that
21 transmission mode, that technology more and more.

22 Q. Were there any limits on the 2019 testing?

23 A. Yes. There were several test sets taken at the end of
24 2019. However, due to COVID restrictions, we weren't able to
25 take additional data in 2020, so for my analysis I included

1 -- went back to 2015, because that's the date that the '774
2 Patent was granted, and I analyzed the data from 2015 to 2019.

3 Q. How often is TM4 used in the damages period?

4 A. So the damages period, which is February 2019 to August
5 2020, the '774 mode is used 100 percent of the time.

6 Q. From 2015 to 2019, how often is the '774 Patent mode
7 used?

8 A. It's used -- I found it to be used 64 percent of the
9 time, so to do my analysis and to be very conservative, to
10 give Apple the benefit of the doubt, from my analysis going
11 forward I used the 64 percent number.

12 Q. How often is the '774 Patent used by Apple, based on your
13 analysis?

14 A. So, again, thinking back to the Apple data, they said
15 it's used 72 percent of the time. The independent testing
16 said between 64 and 100 percent. So again, to be very, very
17 conservative, I used the 64 percent number.

18 Q. How did you quantify the technical value of the '774
19 Patent?

20 A. What I wanted to do is I wanted to see what incremental
21 value the '774 technology added to the Apple device, not any
22 value associated with it being standardized.

23 Q. To do this, what did you compare it to?

24 A. So what I did is I compared the '774 mode to something
25 called transmit diversity, and by comparing the performance of

1 the '774 technology to the closest alternative that I could
2 find, transmit diversity, I would be able to quantify the
3 difference in the -- using the '774 technology.

4 Q. Is your analysis an analysis of the incremental benefit
5 provided by the '774 Patent over the alternatives available to
6 Apple?

7 A. Yes, it is. Again, I wanted to focus on what incremental
8 improvement that the '774 technology brought to the Apple
9 device compared to the baseline of the next closest
10 alternative, which was transmit diversity, in my opinion.

11 Q. How does transmit diversity differ from the '774 Patent?

12 A. So in this animation I show you an animation of the
13 transmit diversity mode. Transmit diversity consists of
14 taking one data set, so one color there, using two antennas,
15 so you see two data streams; however, there's no closed loop
16 feedback in the system, so you might end up with a little bit
17 of error but, in general, transmit diversity is kind of slow
18 and steady. It's a nice solid technology.

19 Q. And how does that differ from the '774 Patent?

20 A. So as we saw before, the '774 technology includes that
21 closed loop feedback where the phone is taking measurements
22 and sending those to the base station.

23 Q. Did you analyze potential -- other potential alternatives
24 that could have been used?

25 A. Yes, I did, and there were no good alternatives. All the

1 other alternatives were performing much worse or, as I show on
2 this slide, they would also be covered by the use of the
3 Plaintiffs' patents or they were rejected by the LTE
4 standards.

5 Q. How much faster is the '774 Patent solution than the
6 closest alternative?

7 A. So based on my analysis, the '774 Patent is 14 percent
8 faster than the next closest alternative.

9 Q. Has Apple argued that there was another alternative it
10 could have used?

11 A. Yes. They claim using something called open loop spatial
12 multiplexing could be used.

13 Q. Is open loop spatial multiplexing an acceptable
14 alternative?

15 A. No, it isn't, because it's also covered by a patent of
16 the Plaintiff.

17 Q. Have you seen any data on the usage of open loop spatial
18 multiplexing compared to the '774 Patent technology?

19 A. Yes, I have. The open loop spatial multiplexing is
20 associated with something called transmission mode 3. So the
21 '774 is transmission mode 4. So Apple's own data showed me if
22 I can find it -- can we bring up the demonstrative --

23 MR. SHEASBY: I think it's slide 29, Mr. Huynh.

24 THE WITNESS: So here's the open loop mode
25 transmission mode 3, and here is the '774 mode based on my

1 analysis. And you can see that the open loop mode is used
2 much less often than the closed loop mode associated with the
3 '774 Patent.

4 Q. (BY MR. SHEASBY) And this is PX 0020?

5 A. Correct.

6 Q. What is your final conclusion regarding the benefit
7 provided by the '774 Patent?

8 A. My final conclusion is that the '774 Patent provides at
9 least 14 percent benefit, and then if I discount that by the
10 conservative estimate of its usage of 64 percent, to Apple the
11 next closest alternative that they could use would make their
12 device 8.3 percent slower than if they used the '774
13 technology.

14 Q. What claims of the '284 Patent are at issue?

15 A. Claims 1, 14, and 27. I show text from claim 1 on the
16 left.

17 Q. Who invented the '284 Patent?

18 A. The '284 Patent was invented by several engineers from
19 Panasonic. All of them were prolific inventors.

20 Q. What is the industry's view of Panasonic's record of
21 innovation?

22 A. Again, we've seen this slide before, but if you look at
23 the slide you'll see that Panasonic was viewed as an innovator
24 due to their holdings in the patent area.

25 Q. And what is the source of this slide?

1 A. This is from Apple. This is an Apple document.

2 Q. What problem does the '284 Patent address?

3 A. Okay. So LTE communications involve sending data packets
4 from the base station to the phone and from the phone to the
5 base station. Well, those packets contain two things,
6 actually--control information and data. The '284 Patent is
7 directed to reducing the amount of control information in that
8 packet without adding additional errors into the system. So I
9 have highlighted on the slide that they're focused on reducing
10 the amount of bits in that data packet. A bit is the 1 or 0
11 used to send information in communication systems. And you
12 notice they say they do not introduce additional errors into
13 the system.

14 Q. Why is there a need to reduce the number of bits for a
15 control signal?

16 A. So if you look at this slide, on the left I show in
17 orange control information, and then in blue you see data, and
18 this square is the data packet I've been talking about.

19 Now, if you could reduce the amount of control
20 information, you could actually have more data in that packet.
21 So reducing the amount of control information is a very
22 important goal if you want to send additional data through
23 your network.

24 Q. Is there a risk of reducing control information?

25 A. Yes, there sure is. If you notice on the slide, I call

1 the control information 'assembly instructions', because that
2 tells the phone how to read data sent by the base station or
3 how to format data to send it up to the base station. And if
4 that's not done right, there's errors in the system, your
5 video will hang up, your text message won't go through, your
6 call will drop.

7 Q. How many bits would the '284 Patent save?

8 A. The '284 Patent saves two bits overall. Now, that
9 doesn't sound like a lot of data; however, these packets are
10 flowing hundreds and millions of times a second. The slide in
11 front of you -- I'm sorry.

12 MR. SHEASBY: Can we advance the next slide,
13 Mr. Huynh?

14 Q. (BY MR. SHEASBY) When is the '284 --

15 MR. SHEASBY: Slide 37.

16 Q. (BY MR. SHEASBY) When is the '284 Patent used by Apple?

17 A. The '284 Patent is used any time the device needs to send
18 data up to the network. So if your phone has data to send, it
19 has to use the '284 technology to send that data.

20 Q. Is there objective evidence that the industry recognize
21 the importance of this solution?

22 A. Yes, there is. 3GPP, that's THE standard body made up of
23 engineers from leading technology corporations around the
24 world, would get together and choose which proposed
25 technologies were superior and to include into the LTE

1 standard. Panasonic competed against other companies and
2 their proposal won out.

3 Q. What other options did the LTE body consider before
4 adopting the '284 solution?

5 A. So on the slide I show you three examples of other
6 solutions considered by 3GPP, and they rejected them in favor
7 of Panasonic's proposal.

8 Q. How did you analyze the technical value of the Panasonic
9 invention which won out in LTE?

10 A. First I compared it to the next best available
11 alternatives, noninfringing alternative, and I did a
12 performance analysis of the impact of not using the '284
13 technology.

14 Q. Were there any good alternatives available?

15 A. There were no good alternatives available because the
16 available other alternatives, as I indicate here, were either
17 rejected by 3GPP because they added error to the system, or
18 they were much less efficient, or they still used '284
19 technology.

20 Q. Based on your technical analysis, what is the closest
21 alternative to Apple?

22 A. Something called the separate field approach, which is
23 the first row on that table.

24 Q. Why is separate field the closest alternative?

25 A. Because it does not add additional errors into the

1 system.

2 Q. Did you quantify the performance improvement of the '284
3 Patent over the separate field approach?

4 A. Yes, I did. So the analysis I summarize here is actually
5 fairly complex. What I had to do is I had to average the
6 impact of the '284 technology over time and also over
7 something called resource blocks, which are involved in the
8 telecommunications network.

9 Now, the first bullet shows you that I took into account
10 the two-bit savings. The next two bullets show you that I
11 took into account how often those two-bit savings would be
12 used or sent in the network. And then the last bullet, I took
13 into account how often Apple's device would be using that
14 particular piece of information.

15 Q. Can speed also be understood in terms of increased
16 network capacity?

17 A. So network capacity you can think of as how much either
18 data you can send or how many users you can support. Now, if
19 you have a fixed network capacity, and let's just say the
20 resources that the network could use are bits, if you take
21 away some of those bits--right?--the download speeds would
22 slow down. So you can compensate by that if you added
23 additional network resources meaning, say, another base
24 station. So you can actually -- there's a direct general
25 relationship between network capacity and upload and download

1 speeds.

2 Q. How does the savings in network capacity affect download
3 speed in this case?

4 A. So in this case, based on my analysis, I came to the
5 conclusion that the '284 technology saves between .19 percent
6 and .35 percent of network capacity. It increases the
7 capacity by that amount.

8 Now, taking the relationship into account I just talked
9 about, you could also consider that as if you -- if you're not
10 using the '284 technology, that would be the direct equivalent
11 between a .19 and a .35 percent slow-down in the network if
12 you're not using the technology.

13 Q. Can you think about the '284 Patent in terms of savings
14 of cellular data?

15 A. Yes. Again, this calculation is fairly complicated, but
16 I took into account how often the average user is using the
17 phone to send data; how many packets are sent per
18 millisecond--a thousand packets a second; how often that
19 control information is sent by the network--30 percent at a
20 time; how many bits are saved over the three-year life span of
21 the phone; and I concluded that per day per device it saves
22 900,000 bytes or 900 megabytes over the life of the phone, a
23 single phone in a single cell. We have 650 cells in the U.S.
24 and there is hundreds of millions of phones.

25 Q. Is there evidence that cellular providers care

1 particularly about the '284 Patent technology?

2 A. Yes. This document is from a network operator named
3 T-Mobile. This document shows you that they require any
4 device manufacturer to support three particular 3GPP
5 standards, 36.211, 36.212, and 36.213, which are directly
6 related to the '284 technology. They also require,
7 approximately, a small number of additional specs, 25 or so,
8 and they require adherence to TS 36.321 and TS 36.311 -- 331.

9 Q. What part of the Apple device is -- that's Exhibit
10 PX 2055. Is that correct?

11 A. That is correct.

12 Q. What part of the Apple device is involved in the use of
13 the '774 and '284 Patents?

14 A. Yes. As Apple's own representative testified, that every
15 part of the device is involved in transmissions, and he
16 testified that in order to send and receive data, every part
17 of the iPhone is used. And I agree with this in particular
18 because the baseband processor has to interact with all the
19 other components on the device.

20 Q. Can you show some examples of the components needed to
21 practice the '774 and '284 Patents?

22 A. Yes. This is a circuit board from the iPhone X. It
23 shows transceivers, amplifiers, antennas -- pointing out the
24 antennas, but there's also things such as filters on there,
25 too, and all these elements are involved in practicing or

1 implementing technology. And I also have here a circuit board
2 from the iPhone 11 Pro Max also illustrating all the
3 components in the phone that interact to be able to implement
4 the technology of the '284 and the '774 Patents.

5 Q. Were you here when Apple's counsel in opening suggested
6 that all of the operation of the patents occurs in something
7 called the baseband chip?

8 A. I was, yes.

9 Q. Is that an accurate statement?

10 A. No, not in my opinion and my experience. I've done data
11 analysis with cell devices and software analysis, and I've
12 built devices based on cell technology over the last few
13 decades, and the baseband processor definitely has to interact
14 be able to implement LTE or other generation technologies.

15 Q. We discussed the Qualcomm-Apple settlement agreement?

16 A. Yes, I was.

17 Q. And that was the agreement that had a very large number
18 associated with it. Correct?

19 A. Yes, it did.

20 Q. Did you analyze the patents that were involved in that
21 agreement?

22 A. Yes, I did.

23 Q. What was your conclusion?

24 A. My conclusion was the patents were directed to the same
25 general area as the '284 and the '774 Patents because they

1 dealt with efficiencies and signaling in LTE systems.

2 Q. Does Apple identify the Qualcomm patents as something it
3 could use as an alternative to the Patents-in-Suit?

4 A. They do not.

5 Q. Can you please summarize your findings on the technical
6 value of the patents you analyzed?

7 A. Yes. Based on my technical analysis of the incremental
8 benefits that these patents provide to the devices and that
9 included how often the patent technology was used in the Apple
10 products, the extent of the use in the networks for the '774
11 technology, my analysis showed that if they didn't use that
12 technology, it would result in a reduction in speed of 8.3
13 percent.

14 For the '284 technology, my analysis showed that if they
15 did not use that and they used the next closest alternative,
16 it would result in a between .19 and .35 percent reduction in
17 speed.

18 Q. Thank you, Professor Mahan.

19 MR. SHEASBY: Your Honor, I pass the witness.

20 THE COURT: Cross examination by the Defendant?

21 MR. MUELLER: Your Honor, may we pass out some
22 binders?

23 THE COURT: You may. Give them to the Court
24 Security Officer. You don't need to approach the witness
25 directly.

1 MR. MUELLER: May I proceed Your Honor.

2 THE COURT: You may proceed.

3 CROSS EXAMINATION

4 BY MR. MUELLER:

5 Q. Good afternoon, Doctor Mahon.

6 A. Good afternoon.

7 Q. It's good to see you.

8 A. It's good to see you, too.

9 Q. Now, I'd like to ask you a few questions, if I could,
10 about your role in this case. Okay?

11 A. Yes, sir.

12 Q. You understand that this particular trial is a trial in
13 which the ladies and gentlemen of the jury are charged with
14 setting a fair, reasonable, and nondiscriminatory royalty for
15 the five patents in this case.

16 A. Yes, I do.

17 Q. And you're here to testify about two of them. Correct?

18 A. Yes, I am.

19 Q. Now, to be clear, you're not here to actually offer a
20 royalty rate that you're advocating to the jury. Correct?

21 A. No, I'm not.

22 Q. You're here on some technical issues, sir. Is that
23 right?

24 A. Absolutely, yes.

25 Q. Now, the technical issues in this case relate to

1 standards. Correct?

2 A. The technical issues relate to how the standards are
3 implemented and whether the technology is in those standards.

4 Q. And the particular standard for these five patents, the
5 two that you looked at and the three others, is LTE. Correct?

6 A. That is correct.

7 Q. And we're going to come back to that.

8 But there's other standards in everyday life. Right?

9 A. I'm not sure what you're referring to.

10 Q. Let me give you one example. You were here for the
11 opening statements?

12 A. Yes, I was.

13 Q. And did you hear me refer to the standard on plugs,
14 electrical plugs?

15 A. Yes, I did.

16 Q. And that is, in fact, a standard. Plugs are
17 standardized. Correct?

18 A. That is true, yes.

19 Q. And the purpose of that is that no matter who makes a
20 particular device, the plug will fit into the wall in a given
21 place. Correct?

22 A. In general, yes.

23 Q. So here in the U.S., we have an American standard for
24 plugs. Correct?

25 A. That's correct.

1 Q. And if you traveled to certain different countries, it's
2 possible they might have a different plug design there.
3 Right?

4 A. Correct.

5 Q. But here we want to make sure everyone's using the same
6 electrical plug. Correct?

7 A. Ideally, yes.

8 Q. Now, with that plug design, different companies can add
9 their own innovations on top of the plug. Right?

10 A. They can manufacture the devices to use the electricity
11 to do whatever they want.

12 Q. So let me give you an example, if I could, sir.

13 You are, of course, familiar with televisions.

14 A. Yes.

15 Q. And there's a huge variety of televisions out there in
16 the world. Right?

17 A. Yes, there are.

18 Q. There are some very simple ones. Fair?

19 A. In terms of complexity?

20 Q. Just lower costs or a simpler televisions. Those are out
21 there.

22 A. There are cheaper televisions and more expensive ones,
23 yes.

24 Q. And then there are some high-end fancy televisions as
25 well. Correct?

1 A. Yes, there are.

2 Q. Now, Samsung, for example, makes televisions. Right?

3 A. Yes, they do.

4 Q. And they make some very good ones, don't they?

5 A. I believe so, yes.

6 Q. The Samsung high-end televisions use the same plug as the
7 simple low-cost televisions. Correct?

8 A. That's correct.

9 Q. Now, Samsung has done a lot of hard work and probably put
10 a lot of engineers to work designing all of the innovations
11 that go into their high-end televisions. Correct?

12 A. I'm sure they have.

13 Q. And they've achieved quite a bit of success as a result.
14 Right?

15 A. They are a well-known technology company.

16 Q. And Samsung has a pretty decent segment of the television
17 market, the best of your knowledge. Correct?

18 A. I really don't know, but I believe that's the case.

19 Q. If we go to an electronics store, we're likely to see
20 some pretty fancy Samsung TVs offered for sale. Correct?

21 A. Most likely, yes.

22 Q. Now, sir, from a technical perspective, a technical
23 perspective, if somebody who had a patent on part of the plug
24 went to Samsung and said, You've been awfully successful
25 selling your fancy TVs and I want you to pay me a huge royalty

1 as a result, would that seem fair?

2 A. That analogy doesn't work to the patents under --

3 Q. Sir, not my question. In my hypothetical, would that --

4 THE COURT: Counsel, if you think the witness is
5 non-responsive, don't instruct the witness. Take it up with
6 the Court.

7 MR. MUELLER: Thank you, Your Honor.

8 I would move to strike that answer as non-responsive.

9 THE COURT: I'll sustain that objection.

10 Q. (BY MR. MUELLER) Doctor Mahon, in my hypothetical from a
11 technical perspective, would that be fair?

12 A. Could you repeat the question, please?

13 Q. Sure, absolutely. If a person or company that had a
14 patent on a part of the electrical plug went to Samsung and
15 said, I see you've been very successful with your fancy
16 televisions and I want you to pay me a huge royalty because of
17 your success, I hold a patent on part of the plug, would that
18 seem fair?

19 A. Well, if the TV was a doorstop without it, I would think
20 so, yes.

21 Q. Well, sir, no TV is going to work without electricity.
22 Right?

23 A. That is correct.

24 Q. But the electricity is not what made that Samsung TV
25 special, is it, sir.

1 A. I wouldn't speculate on that.

2 Q. What made that TV special was all of the hard work the
3 Samsung engineers did to add their own features and
4 innovations on top of the plug. Correct?

5 A. I wouldn't speculate on that.

6 Q. Let's take a look at the slide I showed in my opening
7 statement, if we could.

8 A. Sure.

9 Q. And Doctor Mahon, you saw this. Right?

10 A. I did.

11 Q. Whole bunch of different ways to design devices that have
12 plugs. Correct?

13 A. Agreed.

14 Q. The plug remains constant. Correct?

15 A. The format of the plug, you mean?

16 Q. The format of the plug remains constant.

17 A. Yes.

18 Q. That's the whole point of the standard--to make sure
19 everyone has the same plug. Correct?

20 A. For electrical appliances like the blender, yes.

21 Q. And then on top of that, all of these companies can
22 compete to add their own features and innovations and their
23 own hard work. Correct?

24 A. They're free to do with the electricity what they want
25 to.

1 Q. Now, let's talk about cellular standards.

2 A. Please.

3 Q. LTE is one example of cellular standards. Correct?

4 A. Correct.

5 Q. And they're available for everyone to use. Right?

6 A. Any device manufacturer that wants to develop a device,
7 and if they adhere to the LTE standards and they go through
8 the conformance testing, they can interoperate with the
9 networks.

10 Q. So let's pull another slide I used in my opening
11 statement. This is DTX 5.15.

12 MR. MUELLER: I'm sorry, Mr. Lee. It's the one --
13 the various types of phones with LTE. I may have the number
14 wrong. I apologize.

15 Q. (BY MR. MUELLER) Doctor Mahon, you saw when I discussed
16 this slide in my opening statement?

17 A. Yes, I did.

18 Q. And did you hear me say that all of these different
19 phones support LTE? Correct?

20 A. I did hear you say that.

21 Q. So all of these different phones get to use the LTE
22 standard. Right?

23 A. It's my understanding that they are all LTE phones.

24 Q. Just like all the different TVs get to use the plug.
25 Correct?

1 A. Correct.

2 Q. Now, on top of the standard, different companies have
3 chosen to make different phone designs. Right?

4 A. In terms of implementation?

5 Q. In terms of the features they've added to the device
6 beyond LTE. Correct, sir?

7 A. You mean like the screen or the battery size.

8 Q. Those are good examples, sir.

9 A. Sure.

10 Q. And we have here on the left-hand side a relatively
11 inexpensive Doro phone. Correct?

12 A. I'm not aware of the cost, but it looks inexpensive.

13 Q. Fair enough. But it's a relatively simple phone.
14 Correct?

15 A. It appears to be.

16 Q. And it supports LTE. Right?

17 A. It's my understanding it does.

18 Q. And, in fact, you would agree, sir, from a technical
19 perspective, someone can buy a phone that fully practices LTE
20 for a very small amount of money these days. Right?

21 A. Could you define 'fully practicing LTE'?

22 Q. It supports the LTE standard. I can call someone over
23 the LTE network --

24 THE COURT: One at a time, please.

25 Go ahead and answer.

1 THE WITNESS: Meaning you can make a call? Yes.

2 Q. (BY MR. MUELLER) Now, as you move across the screen, we
3 see some phones that are a little bit fancier. Correct?

4 A. Yes.

5 Q. It's a very fancy Samsung phone right there called the
6 Galaxy Fold. Is that correct?

7 A. That is correct.

8 Q. That phone actually has a folding screen. Right?

9 A. It appears to, yes.

10 Q. Now, that screen reflects the hard work of the Samsung
11 engineers. Correct?

12 A. I don't know if Samsung developed the screen or not.

13 Q. Well, Samsung has some of the most sophisticated high-end
14 phones in the world, don't they?

15 A. They compete in the phone market, yes.

16 Q. Not just in the phone market. They compete at the upper
17 echelon of the phone market--Samsung.

18 A. They are a leading technology company.

19 Q. And the iPhone here is on the right as well. Correct?

20 A. Yes, it is.

21 Q. Now, that also supports LTE. Right?

22 A. Yes, it does.

23 Q. And Doctor Mahon, you're not here to say the Apple
24 engineers have not done a lot of hard work of their own that
25 went into the iPhone. Correct?

1 A. I made no such statement.

2 Q. And there's a lot of features and innovations and
3 technologies that resulted from Apple's own hard work.
4 Correct?

5 A. Apple is known for innovations in the software area and
6 in the screen area particularly.

7 Q. Now, there were some references -- and I'm not going to
8 get into the numbers with you, but there were some references
9 with the last witness. You were there for that?

10 A. I was here for most of it.

11 Q. To Apple being successful from a profit perspective. And
12 I'm not going to get into the numbers right now, but did you
13 hear that testimony?

14 A. I believe I did.

15 Q. And, sir, you'd agree from a technical perspective,
16 technological perspective, there's a whole bunch of reasons
17 for Apple's success beyond LTE.

18 A. You can think of Apple as a very sophisticated phone.

19 Q. Sir, my question is, from a technical perspective there's
20 a whole bunch of reasons for Apple's success beyond LTE.

21 A. Well, I quibble with you a little bit there.

22 Q. Sir, if just practicing LTE made a company successful,
23 everyone would do it. Right?

24 A. So anyone who would meet the LTE standards could sell a
25 phone.

1 Q. Sir, if achieving the success of Apple just required LTE,
2 everyone would do it. Right?

3 A. I don't understand what you're asking.

4 Q. Sir, the reason why Apple's been so successful is because
5 they don't just have LTE; they have an enormous assortment of
6 features and technologies that they came up with through their
7 own hard work. Correct?

8 A. So not associated with the signaling technology, yes.

9 Q. You agree with me, sir. Right?

10 A. Their screens are great.

11 Q. A lot more than just the screens being great. You're not
12 here to denigrate the work of the Apple engineers, are you?

13 A. Not at all.

14 Q. Okay. Now, if we look at an Apple iPhone and just look
15 at it from the outside and then go in -- would you be able to
16 do that with me just for a few steps?

17 A. Sure.

18 Q. Okay. So if we start on the outside, there's a glass
19 case. Correct?

20 A. Yes, a composite, yes.

21 Q. And if we were to crack open that glass case and look
22 inside, there's going to be several hundred, if not thousands,
23 of components. Right?

24 A. There is many components.

25 Q. And even on the glass screen, if you look right behind

1 it, there's a very sophisticated touch interface. Right?

2 A. Yes.

3 Q. There's a very nice camera?

4 A. Typically, yes.

5 Q. There's multiple computer chips inside this device.

6 Right?

7 A. Correct.

8 Q. And it would be true for a high-end Samsung phone as

9 well. Those also have lots of components within them.

10 Correct?

11 A. They would have a lot of components, yes.

12 Q. Now, if we make our way down, we would eventually arrive

13 at something called the baseband chip set. Correct?

14 A. Correct.

15 Q. That includes not only a baseband chip but something

16 called a power management chip.

17 A. Yes.

18 Q. And a transceiver.

19 A. Yes, indeed.

20 Q. Now, the baseband chip is a special type of computer

21 chip. Correct, sir?

22 A. Yes. It's optimized for processing.

23 Q. And it's optimized for processing a very specific

24 thing--cellular communications information. Right?

25 A. Yes, such as we talked about today.

1 Q. Now, you reviewed some source code in this case, didn't
2 you?

3 A. Yes, I did.

4 Q. What source code did you review? Where was it running?

5 A. I reviewed baseband processor code for Qualcomm and Intel
6 chips.

7 Q. And that was the most relevant source code you could look
8 at. Correct?

9 A. That was the source code I could look at to see if the
10 technologies were being practiced.

11 Q. But to be very clear, it was running on a baseband chip.
12 Right?

13 A. It was running on the chip which interacts with other
14 components, yes.

15 Q. And that would do the processing for all of the cellular
16 standards that a device supports. Correct?

17 A. No, I'd have to disagree with you there.

18 Q. It would run the code -- for example, LTE specification
19 code would run on that baseband chip. Right?

20 A. There are also other parts of the standard that run on,
21 for example, the general processor, such as the TCP/IP stack.

22 Q. Sir, true or false, there is LTE code running on the
23 baseband chip.

24 A. That's true.

25 Q. Now, the LTE standard was developed by an organization

1 called the European Telecommunications Standards Institute
2 Correct?

3 A. That was one organization, yes.

4 Q. And a whole bunch of folks went to meetings at that
5 organization to create the standard. Right?

6 A. Yes. I had to follow their meetings very closely for
7 decades.

8 Q. And you know from your close following of those meetings
9 that there were dozens of companies that went. Right?

10 A. There were many companies involved in the process.

11 Q. It wasn't just Samsung, Panasonic, and LG. Correct?

12 A. Attending the meetings, you mean?

13 Q. Attending the meetings; making proposals.

14 A. Well, in general there are many, many companies
15 participating, but very limited companies actually making
16 major contributions.

17 Q. Sir, Panasonic, Samsung, and LG were not the only
18 companies making contributions. Correct?

19 A. There were a few others.

20 Q. Qualcomm?

21 A. Qualcomm, yes.

22 Q. Intel went as well?

23 A. Intel was there, too, yes.

24 Q. And Qualcomm and Intel make baseband chips, or have
25 historically. Correct?

1 A. Correct.

2 Q. Now, the size of the LTE standard, we're talking about a
3 pretty large document. Correct?

4 A. Define the standard.

5 Q. The LTE standard technical specifications that have been
6 promulgated by ETSI.

7 A. So TS documents that we're talking about and we're
8 talking about documents pertinent to LTE.

9 Q. And those are thousands of pages long. Correct?

10 A. Well, certain documents are limited to 70, 80, 100 pages;
11 other documents are like 800 pages long.

12 Q. And if you add them up, thousands.

13 MR. SHEASBY: Your Honor, I object as absolutely
14 irrelevant--the lengths of the LTE specification. There is no
15 relevance whatsoever.

16 THE COURT: Overruled.

17 Q. (BY MR. MUELLER) Within that specification, Doctor
18 Mahon, you believe the two patents that you looked at, '284
19 and the '774, related to particular sections within LTE.
20 Right?

21 A. Yes, it does.

22 Q. And I think you told the ladies and gentlemen of the jury
23 a few of them, but let's just make sure we know all of them.
24 These sections go by TS codes. Is that right, sir?

25 A. Yes. TS means technical specification.

1 Q. Now, for the '774 Patent, you believe it's relevant to
2 TS 36.201. Correct?

3 A. Not 201, no.

4 Q. 36.211?

5 A. 211, yes.

6 Q. 36.212?

7 A. Correct.

8 Q. 36.213?

9 A. Correct.

10 Q. 36.300?

11 A. No.

12 Q. 36.331?

13 A. No.

14 Q. Okay. But we can agree on -- why don't you give me the
15 list of the ones you agree on?

16 A. 211, 212, and 213.

17 Q. Thank you, sir.

18 Now, for the '284 Patent, do you believe it's relevant to
19 TS 36.201?

20 A. No.

21 Q. 36.212?

22 A. Yes.

23 Q. 36.213?

24 A. Yes.

25 Q. And 36.321?

1 A. No.

2 Q. Okay. So give me the list of the ones you do agree with.

3 A. 211, 212, and 213.

4 Q. Now, for those particular sections in the standard, other
5 companies have also declared patents as essential. Correct?

6 A. I'm not aware of any.

7 Q. You do understand, sir, that the five patents in this
8 case are not the only patents that have been declared
9 essential for LTE. Right?

10 A. That's outside my area of expertise.

11 Q. Fair enough. Fair enough.

12 Now, the sections that you've just described, of course,
13 are available for use by the world on a fair, reasonable and
14 nondiscriminatory basis. Correct?

15 A. Again, I'm not into licensing. I don't know that.

16 Q. Let me ask you this, sir. When you spoke with
17 Mr. Sheasby about the testing that you relied on, he asked you
18 the question if it mattered whether the testing were Android
19 phones or Apple phones. Do you recall those questions?

20 A. I do.

21 Q. And you said it didn't matter. Right?

22 A. For the testing we were talking about, it didn't impact.

23 Q. Because, in your view, all of those different phones were
24 using the same sections of the standard. Correct?

25 A. No, that's incorrect.

1 Q. Sir, you did rely on testing of a variety of different
2 phones. Correct?

3 A. Yes, I did.

4 Q. And you treated that as relevant to the value of the
5 standard to Apple. Fair?

6 A. Yes.

7 Q. Now, let's talk a bit more about the technologies and
8 whether they are similar or dissimilar. Do you have that
9 subject in mind?

10 A. Yes.

11 Q. So let me start you off with an analogy.

12 MR. MUELLER: If we could pull up DDX 54.5.

13 Q. (BY MR. MUELLER) I'm going to ask you some questions
14 about an analogy in which you're interested in buying a new
15 truck. Okay?

16 A. Okay.

17 Q. So let's assume you're interested in buying that truck on
18 the left. I think it's a Ford F150, and that's the one you
19 are interested in. Are you still with me?

20 A. I see, yes.

21 Q. Now, if you were interested in buying that vehicle, would
22 you look at the prices of a Ferrari from a technological
23 perspective to try to figure out what a fair price would be
24 for the truck?

25 MR. SHEASBY: Your Honor, I object. This is

1 completely unrelated to the technological analysis that
2 Professor Mahon did.

3 THE COURT: He is entitled to ask this kind of
4 question. It's a hypothetical.

5 Go ahead, counsel. Overruled.

6 MR. MUELLER: Thank you, Your Honor.

7 THE WITNESS: So I wouldn't speculate because the
8 Ferrari and, quite frankly, the F150 have a lot of different
9 technology components to them, and I'd have to see what
10 components we are talking about.

11 Q. (BY MR. MUELLER) Fair enough.

12 MR. MUELLER: Let's go to the next slide, if we
13 could.

14 Q. (BY MR. MUELLER) What if we had a broken down vehicle
15 that's pretty old. Would you consider the price of that
16 vehicle from a technological perspective to be relevant to the
17 price of the truck?

18 A. I wouldn't speculate in that area. It's not my field.

19 Q. So you can't tell me one way or the other if you would
20 look at the price of the vehicle on the right and find that
21 that would be relevant to the vehicle on the left?

22 A. Again, I'm not a mechanic. I don't make those kind of
23 decisions in my technical work.

24 Q. All right. Let's look at the next one.

25 What if you have a very similar but not quite identical

1 truck. Would you consider that to be relevant from a
2 technological perspective to your truck purchase?

3 A. Again, it would depend on the chip sets and the
4 technology in the particular vehicles whether they were
5 technologically relevant.

6 Q. What if it were the exact same truck, if we go to the
7 next slide, but a different color. Technologically would you
8 consider that to be relevant to your purchase?

9 A. My favorite color is red, so I prefer that one.

10 Q. So you'd actually put a higher value than the one on the
11 right. Do I have that?

12 A. Well, I'm not sure how I would be able to -- if it's the
13 exact same technology in two vehicles, I don't think it would
14 matter.

15 Q. Let's go one more. What if it's the exact same truck
16 from a technological perspective. Will you be interested in
17 knowing the price of precisely the same vehicle, same trim
18 level, everything, but one is offered down the street, one's
19 offered up the street? Would you do some comparison shopping
20 in that circumstance, sir?

21 A. I do comparative shopping.

22 Q. So in that case, you'd want to know what the two dealers
23 have as a price to make sure they were in the same ballpark
24 before you buy.

25 A. Well, I want the best price.

1 Q. All right. Let's talk about LTE.

2 MR. MUELLER: And if we can go to the next slide.

3 Q. (BY MR. MUELLER) If you were trying to figure out the
4 value of an LTE patent from a technological perspective, would
5 you look to a license covering patents for electrical plugs?

6 A. I see no relationship.

7 MR. MUELLER: Let's go to the next slide.

8 Q. (BY MR. MUELLER) You're familiar with the VCRs. We all
9 had one at one point.

10 A. Yes.

11 Q. And those actually had a standard, too. In some VCRs it
12 was called VHS. That was the standard for the format of the
13 videotape?

14 A. Yes.

15 Q. If you were interested in a license to LTE patents, would
16 you consider from a technological perspective the VHS
17 technology or a license to VHS technology?

18 A. I guess I can't understand the question because I don't
19 see the connection between the two.

20 Q. Too far afield?

21 A. I don't see the connection.

22 MR. MUELLER: All right. Let's go to the next
23 slide.

24 Q. (BY MR. MUELLER) What if we were looking at a license to
25 5G cellular? Is that close enough? Would you consider that

1 to be a relevant data point for LTE?

2 A. I don't deal with licensing issues.

3 Q. Sir, I'm asking you from a technological perspective.

4 That's what your expertise is. Correct?

5 A. Correct.

6 Q. And from a technological perspective, would you consider
7 a license on 5G to be relevant to a license on 4G?

8 A. Again, that's outside my areas of expertise. I do not do
9 licensing.

10 Q. So you can't offer this jury any opinion on the
11 technological similarity or dissimilarity on that
12 circumstance?

13 A. I can talk to the technology all day. I cannot talk to
14 licensing.

15 Q. Okay. Just a couple of more for you, sir, if you would
16 indulge me.

17 What if we were to compare a license to LTE with a
18 license to LTE. We can certainly agree in that
19 circumstance--same standard, it's relevant. Correct.

20 A. I understand what you're saying, but again, this is
21 outside my area of expertise.

22 Q. Sir, from a technological perspective, LTE is LTE. Is
23 that correct?

24 A. That is a correct statement.

25 Q. All right. Let's go one more. What about a license to

1 the particular subsections of LTE that are at issue in my
2 hypothetical and the particular subsections of LTE that are
3 covered by another license. That would be very relevant.
4 Correct?

5 A. Again, I wouldn't speculate on licensing issues.

6 Q. But, sir, I'm just saying from a technological
7 perspective, the subsections are exactly the same. Right?

8 A. A TS 36.211 is a TS 36.211.

9 Q. The last few questions I have for you, Doctor Mahon.

10 You spoke to the ladies and gentlemen of the jury about
11 some performance testing. Correct?

12 A. Yes.

13 Q. And you made some estimates as to the performance
14 benefits of practicing the '284 and '774 patents. Right?

15 A. Yes, I did.

16 Q. Now, to be clear, Doctor Mahon, you yourself did not do
17 that testing. Correct?

18 A. So I worked with, as I mentioned, a company for the '774
19 to do the data collection. I did the data analysis. The
20 '284, that was my math.

21 Q. Sir, I'm just saying, for the actual testing itself, you
22 didn't do it. Correct? You say you did some analysis, but
23 you didn't do actual testing yourself. Correct?

24 A. I spoke to the engineers to make sure that I knew what
25 they were going to do, and we designed the test together and

1 they executed the tests.

2 Q. Now, the question I'm about to ask is not meant to get
3 criticism, but you have been compensated for your time on this
4 case. Correct?

5 A. Yes, I have.

6 Q. You've been paid at this point over -- well over a
7 hundred thousand dollars. Is that right?

8 A. Yes.

9 Q. Okay. But you didn't do this particular testing
10 yourself. Right?

11 A. That's correct.

12 Q. Now, you relied on an organization called TechPats.
13 Correct?

14 A. Yes, I did.

15 Q. And if we could pull up the slide where you referred to
16 their independent testing. Here we go.

17 You described this: Independent testing using
18 specialized equipment. Right?

19 A. That is correct.

20 Q. Now, TechPats, what do you know about them?

21 A. I know they've been around for a number of years. Their
22 employees are engineers that have been working in the field
23 for at least a decade or so.

24 MR. MUELLER: If we could cull out as a
25 demonstrative the TechPats web page.

1 Q. (BY MR. MUELLER) Let me focus your attention if we
2 could, sir, a little further down where it says, "When looking
3 for patent litigation support services." It says, "When
4 looking for patent litigation support services"--right in the
5 middle there--"you want a silent partner behind your patent
6 litigation efforts who exemplifies expertise in intellectual
7 property."

8 Do you see that, sir?

9 A. Yes, I do.

10 Q. Silent partner. Do you see that, sir?

11 A. I do see those words.

12 Q. And they're offering themselves out as a silent partner,
13 not an independent testing facility. Correct?

14 A. Well, I disagree based on my interactions with them.

15 Q. Sir, the words are not independent here. It says silent
16 partner. Correct?

17 A. Incorrect. That doesn't imply lack of independence.

18 Q. Sir, listen to my question. The words silent partner are
19 right here. Correct?

20 A. That is correct.

21 Q. And above that, if we look at the paragraph right above,
22 it talks about empowering you to achieve a favorable outcome
23 for your case. Do you see that?

24 A. I do see that.

25 Q. And that's what they're offering. Right?

1 A. Those words are on the page.

2 Q. It doesn't talk about independence, but talks about
3 helping you achieve a favorable outcome for your case.

4 Correct?

5 A. It does, but that does not exclude independence.

6 Q. And this set of services they are offering are in the
7 service of monetizing patents, and they describe that right
8 here--monetized intellectual property patents. Do you see
9 that, sir?

10 A. No, I don't.

11 Q. Let's find the line here to make sure we are on the same
12 page. It's near the bottom, actually. In fact, it talks
13 about protecting my -- I'm sorry.

14 MR. MUELLER: If you go a little further up.

15 Q. (BY MR. MUELLER) We'll come back to this, sir.

16 But it certainly talks about helping you achieve the best
17 outcomes in court through the help of the silent partner.
18 Right, sir.

19 A. The words are there. I worked with engineers. That's
20 all I can say.

21 Q. Thank you, sir. I have no further questions.

22 THE COURT: You pass the witness, counsel.

23 MR. MUELLER: I do, Your Honor. I apologize.

24 THE COURT: Is there redirect?

25 MR. SHEASBY: Yes, Your Honor.

1 THE COURT: Proceed with redirect.

2 REDIRECT EXAMINATION

3 BY MR. SHEASBY:

4 Q. Professor Mahon, does this case have anything whatsoever
5 to do with electrical plugs?

6 A. Absolutely not. The complexity between the analogy used
7 for the electrical plug and the LTE standards, which I spent
8 decades studying in detail and sweating over, there is -- it
9 has nothing to do with the two.

10 THE COURT: Doctor Mahon, you answered the question
11 fully when you said "absolutely not." If counsel had wanted
12 you to explain further, he'd ask you to. Please try to limit
13 your answers to the questions asked.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Next question, Mr. Sheasby.

16 Q. (BY MR. SHEASBY) What is unique about the data sets that
17 TechPats had available?

18 A. The data sets that TechPats had available offered me a
19 view of how the network technology evolved over time.

20 Q. Who showed more use of the '774 Patent--the TechPats data
21 or Apple's own internal data?

22 A. Apple's own internal data actually showed greater use of
23 the transmission mode associated with the '774 technology than
24 the TechPats data.

25 Q. What number did you choose--the higher number or the

1 lower number?

2 A. I used the lower number in my analysis.

3 MR. SHEASBY: Can we have DDX 51.15? Or Mr. Huynh,
4 if you are in control, that would be Mr. Blasius' slide five.

5 Q. (BY MR. SHEASBY) Do you remember this slide that was
6 shown to you by counsel?

7 A. Yes, I do.

8 Q. Do you know what the LTE download speed is of these
9 phones?

10 A. I don't off the top of my head, but I think it's around
11 100 megabits per second.

12 Q. So the LTE speed for these phones is about a hundred
13 megabits per second.

14 A. That is based on my recollection, yes.

15 Q. Do you know what the LTE download speed is of the iPhone
16 11 Pro Max?

17 A. Yes, I do.

18 Q. What is it?

19 A. 1.6 gigabytes per second.

20 Q. How much more capacity -- how much more LTE does the
21 iPhone 11 Pro Max use than the Doro and BLU phone?

22 A. So if you do the math, it's a factor of 16.

23 MR. SHEASBY: Pass the witness, Your Honor.

24 THE COURT: Is there additional cross?

25 MR. MUELLER: Yes, Your Honor, briefly.

1 THE COURT: All right. Proceed with additional
2 cross, Mr. Mueller.

3 MR. MUELLER: Thank you, Your Honor.

4 RECROSS EXAMINATION

5 BY MR. MUELLER:

6 Q. Just a few final questions for you, Doctor Mahon.

7 In addition to TechPats, you also relied on a Doctor
8 Royer. Do I have that right?

9 A. There is a Mr. Royer that supervised the testing, and I
10 relied on his tests -- I'm sorry. His report and the data.

11 Q. Mr. Royer. Is that right, sir?

12 A. Mr. Royer, yes.

13 Q. Do you know that Mr. Royer didn't keep all the data?

14 A. That would not surprise me because it's typical in a
15 testing scenario.

16 Q. Sir, he didn't keep all the data, did he?

17 A. I would not be surprised because I do that all the time.
18 When I'm setting my test up, I get rid of data.

19 Q. I'm not if you are surprised. He didn't keep all the
20 data, did he?

21 A. I haven't been informed whether he did or he didn't.

22 MR. MUELLER: Pull up the demonstrative from just
23 now one last time, the various phones.

24 Q. (BY MR. MUELLER) Mr. Sheasby focused your attention on
25 the low cost phones on the left-hand side. Right, sir?

1 A. We looked at three of the phones on this slide.

2 Q. And he compared those to the iPhone. Right?

3 A. We did a speed comparison.

4 Q. Sir, there's actually another phone on the screen.

5 Correct?

6 A. Yes.

7 Q. It's a Samsung phone. Right?

8 A. Yes, it is.

9 Q. And that's an awfully fancy, powerful, high-speed Samsung
10 phone. Correct?

11 A. I know the display technology is very expensive.

12 Q. Sir, that is a high-end, high-performance Samsung phone.

13 Correct?

14 A. To my knowledge, yes.

15 Q. And, sir, you understand from the testimony in this case
16 that Samsung has a license to the very same five patents at
17 issue in this case. You know that, sir. Right?

18 A. Again, licensing isn't my area.

19 Q. Sir, did you hear the testimony that Samsung has a
20 license to these five patents?

21 A. I was in the room during licensing discussions.

22 Q. Doctor Mahon --

23 THE COURT: Wait a minute. Did you hear it or not
24 hear it? Answer the question.

25 THE WITNESS: Yes, I did.

1 Q. (BY MR. MUELLER) And Doctor Mahon, you understand that
2 the five patents, for which the ladies and gentlemen of the
3 jury need to set a FRAND rate, from a technological
4 perspective are the identical five patents within the Samsung
5 licenses. Correct?

6 A. I believe -- to my knowledge, that seems correct, but I
7 didn't exactly pay attention to the details.

8 Q. Let's put it this way. His Honor has instructed the jury
9 these are standard essential patents. Correct?

10 A. Correct.

11 Q. That means they are essential to the standard that
12 everybody uses. Correct?

13 A. Correct.

14 Q. Apple doesn't get a different version of those patents.
15 Correct?

16 A. Not that I'm aware of, no.

17 Q. They get the same version from a technological
18 perspective that Samsung got. Correct?

19 A. It's my understanding a patent is a patent, yes.

20 Q. Thank you, sir. Nothing further.

21 MR. MUELLER: No further questions, Your Honor.

22 THE COURT: Additional direct?

23 Go ahead, Mr. Sheasby.

24 REDIRECT EXAMINATION

25 BY MR. SHEASBY:

1 Q. Do you know what the LTE download capacity of the Samsung
2 Galaxy Fold?

3 A. I would be speculating. I know it's above a gigabyte,
4 but I don't know exactly what the speed is.

5 Q. Before counsel was speaking about saving data, tell me
6 why data is not often saved in testing?

7 A. So when you go to do a field test, you set up your
8 equipment and you check it out to bring out any errors or
9 problems, cabling issues, antenna problems, data collection
10 issues, and you collect data, you analyze it to see if the
11 system is working, and then you flush all of that because you
12 want to keep careful records of the system configuration and
13 what you're collecting from that point forward, so it's
14 typical to get rid of that kind of data, setup data.

15 Q. Did you examine the actual data sets used by TechPats?

16 A. Yes, I did.

17 Q. Are you satisfied with their integrity?

18 A. Yes, I am.

19 MR. SHEASBY: Pass the witness, Your Honor.

20 THE COURT: Additional cross examination?

21 MR. MUELLER: I have nothing further for Doctor
22 Mahon, Your Honor.

23 THE COURT: All right. Doctor Mahon, you my step
24 down.

25 THE WITNESS: Thank you, sir, Your Honor.

1 THE COURT: You're welcome.

2 Ladies and gentlemen of the jury, we're going to recess
3 for the evening.

4 I'm going to ask you to take your notebooks to the jury
5 room when you leave the courtroom. Leave them closed on the
6 table there. Please travel safely to your homes overnight.

7 Let me remind you that we're going to try to start
8 promptly at 8:30 in the morning. Try to arrange your travel
9 wherever you're coming from so that you can be here in advance
10 of that time and we can start at 8:30. I might also remind
11 you that, in addition to the weather, check your local school
12 district. There are a lot of kids starting school in the next
13 couple of days that may put school busses and other vehicles
14 on the road, so take all those factors into account.

15 Please follow all my instructions, including among them
16 not to communicate about this case with anyone in any way.
17 Have a good evening, and you are excused until tomorrow
18 morning.

19 (Whereupon, the jury left the courtroom.)

20 THE COURT: Counsel, be seated, please.

21 For your information, we've used a total of two hours and
22 43 minutes of allocated trial time today. Plaintiff has used
23 an hour and 25 minutes and the Defendant has used an hour and
24 17 minutes.

25 Let me also remind you to follow my clear instructions on

1 meeting and conferring overnight and reporting to the Court
2 any disputes that can't be resolved through your strenuous
3 meet and confer efforts. I'll be available in chambers by
4 7:30 tomorrow morning if we need to meet and take anything up.

5 Are there any issues either party needs to raise before
6 we recess for the evening?

7 MR. BAXTER: Can Doctor Mahon be excused if he needs
8 to be?

9 THE COURT: I see no reason why not.

10 Is there any objection?

11 MR. MUELLER: No, Your Honor.

12 THE COURT: Doctor Mahon, you are excused.

13 Anything from Defendant?

14 MR. MUELLER: Just one, Your Honor. And I don't
15 want to belabor this now, but I will come back to Your Honor
16 if we keep hearing language like 'takers'. I think that runs
17 afoul of the MIL on hold out inflammatory language. I didn't
18 want to interrupt today, but I would ask that we --

19 THE COURT: Don't tell me what you're going to do.
20 If you think there's been a MIL violation, you are entitled to
21 raise an objection and I will deal with it when you raise it.

22 MR. MUELLER: I do object to the language 'taker'.

23 THE COURT: Well, raise it when a violation takes
24 place and then I will consider it a timely objection.

25 MR. MUELLER: Understood. Thank you, Your Honor.

1 THE COURT: All right. We stand in recess until
2 tomorrow morning.

3 (The proceedings were concluded at 6:15 p.m.)
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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
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6 COURT AND THE JUDICIAL CONFERENCE OF THE
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